REPORT

OF THE

GOVERNMENT OF BENGAL

ON THE

PROPOSED AMENDMENT OF THE LAW OF LANDLORD AND TENANT IN THAT PROVINCE

WITH

A REVISED BILL AND APPENDICES.

VOLUME I,

CONTAINING THE REPORT, BILL, AND APPENDICES.

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REPORT

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PROPOSED AMENDMENT OF THE LAW OF LANDLORD AND TENANT IN THAT PROVINCE.

No. 849T, dated Darjeeling, the 27th July 1881.

From—A. MACKENZIE, Esq., *Secretary to the Government of Bengal,*

To—*The Secretary to the Government of India*, REVENUE AND AGRICULTURAL DEPT.

WITH my letter No. 229T of the 15th July 1880, the Lieutenant-Governor submitted, for the consideration of the Government of India, a copy of the Report of the Rent Law Commission with the draft Bill prepared by that body "to consolidate and amend the Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal." In forwarding these papers, I was directed to state that they had been referred for report to the High Court, the Board of Revenue, all district judicial and revenue officers, and the leading Associations interested in land, or in the material well-being of the people of Bengal. At the same time Sir Ashley Eden expressed an opinion that, however open to modification in details, the Commission's Report and Bill presented on the whole a reasonable basis for legislation. Vernacular translations were subsequently distributed widely for the benefit of those interested who might be unacquainted with English. The fullest publicity has thus been given to both the Report and Bill.

2. In my letter No. 698T of the 1st October 1880, the Lieutenant-Governor proposed that Mr. Reynolds, a Secretary to this Government, and a Member of the Legislative Council of the Governor-General, should be placed upon special duty in connection with the revision of the rent law, with instructions to receive and consider, in communication with this Government, all the various reports and recommendations that might come to hand, and to prepare a measure embodying the ultimate views of the Local Government. This proposal was sanctioned by the Government of India in their Under-Secretary's letter No. 471 of the 13th October 1880. Mr. Reynolds was also instructed by the Lieutenant-Governor to visit Patna, Dacca, Burdwan, and other important local centres, there to confer with leading official and non-official persons on the subject of the Bill. On these duties Mr. Reynolds was for about seven months almost constantly engaged, and the Lieutenant-Governor desires to take this opportunity of acknowledging the assiduity and ability which he brought to bear upon the very onerous task entrusted to him. A great amount of criticism, more or less valuable, has been submitted to Government on the Rent Commission's Report and Bill. There is hardly a principle or a section that has not formed the subject of comment or controversy, and the duty of examining and weighing the very various opinions that have come before him has been one of which the Lieutenant-Governor has felt to the full all the gravity and responsibility.

3. On the 9th of December the British Indian Association, who may be taken to be the chief representatives of the zemindari interests in this province, addressed the Government with reference to the Bill, asking what course it was

intended to pursue with respect to it, and intimating that a general expression of the Lieutenant-Governor's views on some of the leading points would assist the Association in submitting their opinions. The Lieutenant-Governor's reply to this communication was embodied in my letter No. 3295—1734 of the 10th December; and, as Sir Ashley Eden has followed the procedure, and adheres generally to the views therein set forth, I am directed to quote that letter here *in extenso* :—

I am directed to acknowledge the receipt of your letter of to-day's date, enquiring as to the course which the Lieutenant-Governor proposes to take with reference to the Rent Bill, and in reply to observe that this Government is not yet in a position to state precisely the modifications in the substance of the draft measure prepared by the Rent Law Commission, which it would propose to make. But it may be said generally that the Lieutenant-Governor has no doubt that it will be possible to simplify very considerably both the substantive and the procedure portions of the draft Bill. What the Government desires to have at an early date is an expression of opinion from those consulted upon the *main* features and *general* principles of the Commission's proposals. Having received these, the Lieutenant-Governor will have a Bill drawn up embodying the scheme which the Local Government may finally decide to adopt. This Bill will be submitted, with copies of all the opinions and reports received regarding the work of the Commission, for the consideration and orders of the Government of India and Her Majesty's Government. It will also be published for the information of those interested. But no Bill will be actually introduced in Council until the orders of the Supreme and Home Governments have been received on the proposals of the Local Government. Ample time will thus be given for considering them in detail.

2. Although, as already remarked, the Lieutenant-Governor is not prepared at present to formulate the modifications which will probably be necessary in the scheme of the Commission, he believes it may tend to give a practical direction to the deliberations of your Association, if he indicates in general terms the policy according to which any such modifications will probably be shaped on one or two of the more important points involved.

3. The view taken by Sir Ashley Eden of the report of the Commission, and the objects to be kept in sight in any legislation upon the subject of rent, will be gathered from the following extract from a letter addressed by this Government to the Government of India :—

"Sir Ashley Eden himself has no doubt that some such general revision of Act X of 1859 is urgently called for in Bengal, and, however distasteful some of the proposals which are brought forward and advocated in the papers may be to extreme partizans of the zemindars, he believes that, in the interests of Government, of th, landowners themselves, and of the agricultural community at large, it is very desirable, even at this late day, to define and strengthen the position of the great mass of cultivators, while giving landlords a reasonably cheap and effective procedure for regulating and revising rents, and recovering their just dues. He would like to see the Bengal ryots, as a class, secured in the enjoyment of those rights which the ancient land law and custom of the country intended them to have, protected against arbitrary eviction, left in the enjoyment of a reasonable proportion of the profits of cultivation, and, in short, placed in a position of substantial comfort, calculated to resist successfully the occasional pressure of bad times. He would at the same time not seek in any way to diminish or encroach upon the existing emoluments of zemindars or other rent-receivers. On the contrary, he would like to help them to realise their rents more punctually; and even where these are now excessive, he would not seek to interfere to lower them. He would substitute for the present large and uncertain power of enhancement which the law seems to give to landlords, but which they are quite unable to utilise, a reasonable system of regulating rents, under the control and direction of Government officers, such as the universal custom of India originally favoured and recognised. The zemindars will thus be admitted to share in the growing prosperity of the country upon fair terms; and though they will not have all that they claim in theory, they will have a great deal more than they are now able actually to enjoy in practice. They will cease to feel the irritation of unsuccessful desire, while their tenants will cease to look upon them as their natural foes.

"After careful consideration of the Commission's Report and Bill, the Lieutenant-Governor believes that however open to modification in details, it presents on the whole a reasonable basis for legislation."

To the lines of the general policy thus set forth, the Lieutenant-Governor entirely adheres. But he is now able to supplement the foregoing statement by some further indications of the direction in which the Local Government would wish to move in respect of some of the matters referred to.

4. The chief point to be kept in view is the establishment of the occupancy tenure upon a broad and permanent basis. Protection against arbitrary eviction must certainly be given to every settled cultivator who pays the established rent. No ryot should be evicted from his fields on any ground save persistent failure to pay a fair and reasonable rent. A substantial tenantry, free from debt, and in a position to save and bear the pressure of occasional bad seasons, is what Bengal requires. The Lieutenant-Governor desires, therefore, to see the occupancy tenure made the rule, and not the exception; but at the same time he would have it kept as far as possible in the hands of *bonâ fide* cultivators, and sub-letting by occupancy tenants should be discouraged, if it cannot be altogether prevented. To the question of the best mode of dealing with this evil of subletting, the attention of your Association might very profitably be directed. It is certainly, owing to the fact of its prevalence at present, the most difficult problem in connection with the rent question which the Government is called upon to solve. I am to refer you to the pages of the Report of the Rent Commission cited on the margin, where the subject is discussed at considerable length and from varying points of view. If the occupancy tenure is made at the same time both general and transferable, the necessity of providing compensation for

Volume I, page 13, § 28.
„ II, pages 250-54.
„ II, page 435, § 80 *seq.*
„ II, „ 466.
„ II, pages, 487-88.
„ II, page 490.
„ II, „ 493.
„ II, „ 495.

improvements in the manner contemplated by Chapter IV of the Bill will cease to exist. The Lieutenant-Governor will not enter here into a statement of the arguments which satisfy his mind that such a recognition of occupancy rights in the general body of the cultivators of Bengal is incumbent upon Government, and really in no way an infringement of the rights or detrimental to the interests of the zemindars. He does not look upon the occupancy tenant as entitled to sit at any specially *privileged* rate of rent, but only at the established rates ruled to be equitable for the classes of land held by him, and approved by the Revenue authorities in the manner indicated below. This being the case, all that the Government desires to do is to protect him against arbitrary ejectment, and provide by law that the amount of his rent shall not exceed fair and equitable limits, open to authoritative revision from time to time. The objection urged by some that the zemindar may have a hostile tenant thrust upon him by admitting free transfer by sale of the occupancy right, might perhaps be met by giving the landlord a power of pre-emption, but on the distinct understanding that, in re-settling the tenure with a ryot of his own selection, he must pass it over to him as an occupancy tenure.

5. In regard to the question of enhancement, the Lieutenant-Governor inclines to hold that there would be little practical difficulty in having a Table of Rates drawn up for each district by a District Commission, which should lay down the equitable rates payable for each class of land in the district, or in each segment of the district subject to similar conditions. Such a Commission might be composed of the district Collector, aided by an experienced Settlement Deputy Collector, and one or more persons possessed of special local knowledge. If it be deemed advisable hereafter to establish special courts for the trial of rent-suits, the Judge of any such court would naturally be a member of the Rates Commission of his district. The rates should be fixed with reference to existing rents, change of prices, and all other matters such as are taken into consideration in carrying out a ryotwari settlement. They should be such as in all cases to leave with the cultivator a reasonable profit, as well as maintenance and return for outlay; and any violent disturbance of existing rents should be avoided. The law should prescribe their maximum limit, with reference to gross produce of the staple crop; and here the limitation to one-fourth of the gross-produce, contained in section 23 (*c*) of the Commission's Bill, appears to the Lieutenant-Governor to be reasonable. The landlord should be able to get a moderate and fair enhancement where he is clearly entitled to this. When once the Table of Rates have been approved by the higher Revenue authorities (and before this is done all parties should have full opportunity of objecting to it and criticising it), it should hold good for a period of at least ten years, after which it should be open to revision. The courts should be bound by it as the ultimate standard in all cases of enhancement coming before them. The elaborate alterative procedure for securing enhancement set forth in Chapter XV of the draft Bill appears to the Lieutenant-Governor unnecessary and undesirable. The duty of the Revenue authorities might apparently be limited to giving assistance in preparing, and to checking the district Tables of Rates.

6. The next point on which the Lieutenant-Governor considers the draft Bill open to amendment is in respect of the procedure for realising arrears of rent. There seems to be a general feeling that the procedure of chapter XVIII of the Bill is not calculated to afford the amount of relief expected in the way of expediting the disposal of suits for arrears. In respect of the realisation of current rents, the Government is anxious to assist the landholding interest more effectually. If the receivers of rent would be content with recovering current rent from the actual crop of the year, the Lieutenant-Governor believes that it would be possible, by introducing a modified system of distraint through the instrumentality of the courts, to furnish them with a sure and safe means of recovering such rents in ordinary years, without in any way damaging the tenant's position. The landlord, under this system, would be entitled to file in court a verified application, stamped as a plaint, praying for the recovery by distraint of any arrears of rent due to him on account of any instalments of the preceding 12 months. He would be required to file with his application *primâ facie* proof that the rent demanded was the rent payable in previous years, or, if a higher rent, that it had been accepted in writing by the defaulting tenant. The court would, upon this application, issue process against the crops of the tenant, and distrain for the amount of the arrear. Due opportunity would be given to the tenant of objecting or paying up the claim, and the landlord would be subject to penalties for mis-statements and illegalities. But as the process of distraint would, in consideration of the fees paid, be conducted through the court officers, there would be but small opening for illegality of any kind. It would, of course, be necessary to retain a power in the hands of Government of suspending this special procedure in very bad years. The chief objections urged against a summary procedure by suit followed by a decree would be met by a procedure of this kind. Its effect would probably be to prevent the accumulation of arrears of rent almost entirely—a result which is desirable in the interests of both tenant and landlord. If a landlord allows his tenant's arrears to accumulate for over a year, he cannot complain if he is referred to a regular suit as the means of realising them. This question of summary procedure is one on which the Lieutenant-Governor would be glad to have the advice of your Association.

7. Various other points in the draft Bill, on which the Government desires to have a report, are referred to in my letter to the Board of Revenue of the 15th July last, which was published at the time in the *Calcutta Gazette*. The Lieutenant-Governor hopes that your Association will favour the Government with their views and suggestions upon each and all of such points.

4. By the beginning of February Mr. Reynolds was in a position to prepare, in the light of a large number of reports and memorials received, a revised draft of the substantive portions of the Rent Bill. This draft was drawn up in personal communication with the Local Government, and was, with a full explanatory memorandum, forwarded to the High Court, the British Indian Association, and a large number of selected officers for further report. Mr. Reynolds subsequently completed the revision of the procedure chapters of the Bill, and I am to submit, for the information of the Government of India, a complete copy of his Bill with its covering memorandum (*vide* Appendix IV). Repeated reference will have to be made to this memorandum in the course of this letter. In respect of many of the alterations and additions effected in Mr. Reynolds' draft, the Lieutenant-Governor has no doubt that they are improvements, and he is prepared definitely to adopt them and give them his support. To others, however, he was able to accord only a provisional approval. He was willing to see the suggested amendments put forward tentatively in order to elicit further criticism; but he reserved to himself the liberty of setting aside anything that it might appear to him on further information and reflection undesirable to adopt. The communications since received have, as a matter of fact, led the Lieutenant-Governor to modify in some material points the proposals of Mr Reynolds' draft.

5. In the Schedules attached will be found a list of all the reports and memorials received by Government with reference both to the Commission's original Bill and to the revised Bill prepared by Mr. Reynolds. Copies of these papers, so far as available, accompany this letter; and in Mr. Reynolds' memorandum is given a succinct, but careful *précis* of the criticisms passed upon the Commission's work. In considering these criticisms the Lieutenant-Governor has felt bound to be specially careful to weigh, and not merely to count opinions. If it should be thought that the views of the landlord class have received in the papers more than their fair share of support, it must be remembered that this is the class best able to represent its claims in an articulate shape, and most brought into personal contact with Government officers. It is evident also from some of the reports that want of leisure or inclination has prevented the writers from studying the report of the Commission thoroughly, and mastering the intricate subject under discussion in all its different bearings; while the small amount of settlement work in Bengal, and the transfer (in 1869) of rent-suits to the civil courts, have, it is to be feared, deprived the younger generation of revenue officers of that intimate acquaintance with the rural economy of Bengal, possessed by their predecessors. It thus not unfrequently happens that the most off-hand disparagement of the work of the Rent Commission proceeds from officers on whose judgment in revenue matters the Government is not in the habit of placing much reliance.

6. The Lieutenant-Governor desires to express here his own high appreciation of the thoroughness and completeness of the proceedings of the Rent Commission and of the judicial calmness and moderation of their report. Whatever opinions may be held with respect to particular proposals put forward by them, it is, Sir Ashley Eden thinks, indisputable that, since the time of the Permanent Settlement, the law of landlord and tenant in Bengal has never before been so exhaustively examined. Their work must, as Mr. Reynolds remarks, always "remain the basis of any legislation which may be undertaken in these provinces upon the law of landlord and tenant."

7. The official reports received upon Mr. Reynolds' own memorandum and Bill have not been summarised. Coming as they do from selected officers, they are most of them worthy of attention. But the Lieutenant-Governor thinks it necessary to notice particularly here only those expressions of non-official opinion which have reached the Government. The most important of these is the letter of the British Indian Association of the 18th April last, in which the views of the leading Bengal land-owners may be assumed to be embodied. Many of the positions taken up in this letter will be met, directly or indirectly, in the following paragraphs; but it has been thought convenient to attach to the Association's communication a Note submitted with respect to it by Mr. Reynolds, in which their statements and arguments are briefly and fairly reviewed. The British Indian Association, of course, maintain, or endeavour to maintain, the high view of zemindari or proprietary right naturally

adopted by the class which they represent, and their arguments are echoed in the memorials received from other zemindari associations throughout the province. The value of their general contention can only be fairly judged by those who have made the revenue history of Bengal a subject of careful study, and even then it will often happen that the prejudices of opposing schools will influence materially the conclusions arrived at. The Lieutenant-Governor's own opinion on this particular point will be found below; but he feels bound here emphatically to deny the justice of the assertion in paragraph 11 of the Association's letter, that the "Draft Bill prepared by the Rent Commission is simply revolutionary and confiscatory" in character. The only innovation of any moment suggested by the Rent Commission, which specially favoured the cultivators as opposed to the zemindars, was the recognition of certain rights in ryots who have held for three or more, but less than twelve years; and there cannot be a doubt that this was not in fact an innovation, but a partial return to the old customary law of Bengal. The Lieutenant-Governor will explain hereafter why he considers it desirable to make this return even more decided and complete. On the other hand, very many of the modifications suggested were so greatly in favour of landlords as to raise alarm in the minds of those who are disposed unduly to favour the ryot. It might easily be shown that the British Indian Association condemn with equal vigour actual changes in the law, and the mere reproduction of existing case law or custom when this happens to be distasteful to zemindary absolutism. But it does not appear profitable to burden this letter with the discussion of disputed details, the settlement of which may well be left to any legislative body that may hereafter have to deal with the measure.

8. In the letter of the Indian Association of the 27th June (*Schedule II*) will be found, very ably expressed, the views of a young Society which has taken up, though in somewhat of a partizan spirit, the ryots' side of the controversy. Members of this Association have been travelling through the districts in the neighbourhood of the metropolis, endeavouring to get together mass meetings of ryots to listen to their exposition of the proposals of the Rent Commission. The results of an agitation of this kind among the ignorant and bigoted Mahomedan peasantry of some of the Eastern districts might perhaps be serious, but, in the districts near Calcutta, the schoolmaster has been at work so long, and the subdivisional cutcherry and moonsiff's court are so familiar to all, that little misapprehension as to the true state of affairs is likely to be caused. The ryots in these districts know their present legal position thoroughly well, and are not likely to be led away into quixotic notions of what Government or the legislature contemplates doing for them. The outcome of the agitation appears in numerously-signed petitions, worded in identical terms, from the districts of the 24-Pergunnas, Hooghly, Nuddea, Beerbhoom, and Bankoora. A copy of the form of petition may be seen among the enclosures.

9. There is another "Petition of Ryots and Subjects of Bengal in favour of the old settlement of Land Laws," which was forwarded to Government as having been adopted by a public meeting of ryots and others held in Howrah in March last. This petition is practically identical with many others presented to the Government of Bengal during the last ten years, by Mr. John Stalkartt, an English manufacturer and planter, who holds some plots of ryotee land in the town of Howrah, regarding the tenure and rent of which he has frequent law-suits with his landlords. Mr. Stalkartt is unfortunately not possessed of a very perspicuous style, and it is not always easy to follow his arguments. But, so far as the Lieutenant-Governor understands him, his idea seems to be that Government should by legislation revert to what he conceives to have been the state of things in 1790, upholding and establishing the rates of rent then current, and ousting the zemindars from all that they have since acquired either by prescription or by statute law. It is of course impossible for Government seriously to consider such a proposal. Mr Stalkartt has, however, particularly requested that copies of this "ryots' petition" may be submitted to Her Majesty the Queen, the Secretary of State for India, the Prime Minister of England, and the Members of the different Legislative Councils.

10. It will be observed that no report upon the Rent Bill has been received from the Judges of the High Court, though such a report was promised, and has been repeatedly asked for. The Court has forwarded to

Government the reports of the subordinate judicial officers, but expresses itself unable at present to furnish any criticism of its own. The Lieutenant-Governor does not consider it necessary to delay on this account the submission of the proposals of the Local Government. The questions involved are, most of them, matters on which the opinions of revenue rather than of judicial officers are likely to be important; and it may be hoped that, by the time the Rent Law comes before Council, the Hon'ble Judges of the High Court will be prepared to give the legislature the benefit of their assistance in dealing, at any rate, with the procedure portions of the Bill. This is indeed the view which, it is understood, several of the Judges take of the limits of their duty. It is, they say, for the Government to determine the policy of the Rent Law, and for the Court to advise hereafter as to the forms of law by which it is proposed to give effect to that policy. The Lieutenant-Governor has seen unofficially a copy of a minute by Mr. Justice Field, the late Secretary to the Rent Commission, with reference to Mr. Reynolds' memorandum and revised Bill. Free use has been made of Mr. Field's suggestions on certain points. But he had not had the advantage of seeing the detailed criticisms on the Commission's Bill, or of discussing it point by point with officials and non-officials for months past, as has been done by the Lieutenant-Governor, his Secretary, and Mr. Reynolds; and his own prejudices as drafter of the Commission's report and Bill were naturally enlisted on the side of their work. The Lieutenant-Governor has not therefore found it possible in many cases to admit the force of Mr. Field's objections to proposed modifications of the Commission's suggestions.

11. I am now desired to submit, as embodying the matured views of this Government, an entirely revised Bill, and to explain *seriatim*, for the information of the Government of India, the reasons which have led the Lieutenant-Governor to the conclusions which will there be found formulated and arranged.

Part II.

12. Before, however, explaining at length the details of the new Rent Bill, I am to invite the attention of His Excellency the Governor-General in Council to certain preliminary matters. It is perhaps hardly necessary to enter upon any elaborate argument to prove to the Government of India the need of a thorough amendment of the Rent Law of these provinces; but, as the British Indian Association and the landholders of Bengal generally have, much to the Lieutenant-Governor's surprise, seen fit to declare that no such necessity exists, the Lieutenant-Governor has had brought together in a separate memorandum (Appendix I) a mass of evidence which may be said to establish satisfactorily the following conclusions:—

(1.) That from the year 1863 downwards the necessity of undertaking some time or other a radical revision of Act X of 1859 has been recognised by the Government, the Courts and the public.

(2.) That from the outbreak of the Pubna agrarian riots in 1873 this necessity has been recognised on all hands as *urgent*, and that too in the interests, as well of the landlords, as of the tenants.

(3.) That from the year 1875 the Local Government has, with the concurrence, approval, and aid of all parties, been endeavouring to arrive at some conclusion as to the shape which such a revision of the law should take.

(4.) That until it was found that the report of the Rent Commission failed to settle the disputed points entirely in favour of the landlords, none were more eager to have an amended Rent Law than the landlords themselves.

13. There can be no doubt that the landlords of Bengal would in default of getting the law revised in their own interests throughout, be content for the present with the provision of a summary procedure to enable them to realise their rents more speedily than is now usual. Various attempts have been made

to work out some such procedure, which, while affording relief to the landlords, should yet not be in the hands of unscrupulous members of that class an engine for the utter destruction of their tenantry. All such attempts have failed. It has not been found possible to devise a procedure which would satisfy the landlords without irretrievably injuring the tenants. The opinions of all the best officers consulted upon the "Bill for the more speedy realisation of undisputed arrears of rent," which was introduced into the Bengal Council in January 1879, went to show that, in the vast majority of rent cases there lies at the bottom of the dispute as to payment a dispute as to the rates at which payment should be made; and even where this is not so, there are generally other collateral matters in issue, complicating the facts, and requiring care and judicial discrimination to be brought to bear upon them. As the Rent Commission remark in paragraph 174 of their Report, when setting forth the abbreviated procedure devised by them for certain classes of rent suits:—

"If this procedure appears to any persons less summary than they could wish, and if on this account objections are advanced against it, we can only in reply state our earnest conviction of the extreme danger of summary methods of justice. In order that justice may be done, truth must be elucidated; and the elucidation of truth, especially in this country, and for reasons which we need not here dwell upon in detail, requires time and patience Any attempt to abridge judicial inquiry by arbitrary and abnormal presumptions in favour of either party, which by precluding the production of evidence may enable Judges to arrive at rapid conclusions, is to our minds retrogressive and unsafe. The history of the judicial administration of this country for the last half century is a continuous record of the abandonment of a system of procedure under which rights were hastily and perfunctorily adjudicated upon, the person defeated and dissatisfied being left to a 'regular suit' to right himself, if wronged by an irregular proceeding which too often saddled him with the burden of proof that should have been laid on the shoulders of his adversary, and thus unfairly diminished his chance of ultimate success. We entirely agree in the wisdom which has abolished this system, we will not say, of administering justice, but of choking off litigation, and we cannot recommend the adoption of any summary procedure for rent suits which would involve even a partial renewal of it."

14. Of the justice of these remarks the Lieutenant-Governor is now fully convinced, and he has been driven to seek in other directions remedies for the undoubted grievance that many landlords are experiencing in their inability to realise those rents to which they are equitably entitled. Accepting as so much gain the abbreviated procedure drawn up by the Rent Commission, and which is in effect a Small Cause Court Procedure, the Lieutenant-Governor proposes to expedite the disposal of rent suits by the establishment of special tribunals in those districts where suits of this class are numerous. For this no legislation is necessary. Selected Moonsifs or Subordinate Judges will be set apart for rent work, and being moved as seldom as possible, will acquire an amount of local knowledge and experience that will not only render the rapid disposal of current work easy to them, but prepare them to serve as members of those District Commissions to which, as will be seen below, it is proposed to entrust the regulation of the rates of rent. A beginning has already been made in the establishment of such courts, and I am to append a copy of a correspondence with the High Court showing the arrangements made so far as they have gone (*vide* Appendix V).

15. The Lieutenant-Governor has, however, gone further than this in the interests of the landlords. He has revived, in a modified form, the process of distraint which the Rent Commission struck out of their Bill. Although it is quite certain that in Bengal Proper distraint was hardly ever made use of, while in Behar it was worked only in an utterly illegal manner, which the Government officers in that province have of late years been sedulously engaged in checking, its proposed removal from the Statute Book was viewed with consternation by the whole zemindari interests of the province. It was urged that the mere existence of the power gave the landlord a position and influence the loss of which would leave him entirely at the mercy of his ryot. It has been thought therefore that, if the process of distraint, instead of being placed entirely in the hands of the landlord to be carried out by him through illiterate and unscrupulous underlings, bringing him into direct collision with the ryot, and offering exceptional facilities for extortion and coercion, were made throughout a process of court, it might practically take the place of a summary suit, and yet be open to less objection than any form of summary suit followed by an ordinary decree. Under the latter the whole property and holding of the ryot might be swept away from him before he had realised the position,

or got together further means of defence. But if distraint were strictly limited to the recovery of the rent of the current year at the rates theretofore paid, but little harm could be done to the ryot even by an unjust landlord. Under the limitations proposed in the law, and even under the worst state of facts now existent, the year's rent would not swallow up more than a portion of the ryot's crop, while his other property would remain untouched. He would always therefore have the means left him of contesting the equity or legality of his landlord's action. The courts could always take care that the process of distraint was not made use of as a means of coercing ryots into payment of enhanced rents. The procedure proposed by the Lieutenant-Governor in cases of distraint will be found in Chapter XIV of the accompanying Bill, and is further explained at pages 30 and 31 of Mr. Reynolds' Memorandum.

16. Another proposal designed to facilitate the recovery of simple arrears of rent has been embodied tentatively in section 149 of the Bill. It has been repeatedly urged by the zemindars that, the holding of a ryot with rights of occupancy being declared saleable, his landlord should be allowed to bring it to summary sale for arrears without decree, in the same way as patni and other permanent tenures and under-tenures are now sold in many districts of Bengal. This proposal did not commend itself to the Lieutenant-Governor, or to the more thoughtful among the officers consulted. A patnidar or tenure-holder is generally a man of some substance, employing a law agent at the district courts, able to keep himself informed of every hostile move on the part of his landlord, and ready to resist or invoke the aid of the civil courts to redress his grievances. Landlords are chary of going beyond the law in their dealings with tenants of this class. But the position of the ordinary ryot is altogether different. His occupancy holding is often all that he has, and he would generally, if sold out of his holding, be simultaneously deprived of his house and homestead. Summary sale without decree, after service of a notice which, however 'duly proved,' he probably never saw, would mean to him utter ruin without warning and without remedy. The Lieutenant-Governor could never consent to any such procedure as of general or ordinary application. But it has been suggested that, as the Rent Bill provides for a very admirable system of rent receipts and accounts, and registration of ryots' holdings, it would tend to stimulate the general adoption of this system and lead to wholesome rivalry among zemindars, if additional facilities of the kind in question were given to landlords who could satisfy the Revenue authorities that the improved system was in *bonâ fide* operation on their estates. The ryots would, at the same time, receive under the improved system all needful protection against chicanery or coercion in the matter of rates. This idea has met with considerable support among the officers consulted on it, and the Lieutenant-Governor has permitted its incorporation in the draft Bill.

17. The foregoing, then, are the measures which the Lieutenant-Governor finds himself able to put forward for the more speedy realisation from ryots of arrears of rents when the rates are undisputed; *viz.*:

(1) the establishment of special rent courts;
(2) the abbreviated Small Cause Court Procedure of the Rent Commission, as in Chapter XVIII of the accompanying Bill.
(3) the modified procedure of distraint through the agency of the courts, as in Chapter XIV of the Bill;
(4) the concession in certain cases of summary sale without decree, as in section 149 of the Bill.

18. It must not, however, be supposed that these measures, either singly or all together, will satisfy the demands of the landholding interests in Bengal. It is the policy of the zemindars at present to declare that they want nothing more than a speedy means of recovering undisputed rent, but no procedure will satisfy them which cannot in effect be used for bringing about periodical settlements and revisions of existing rates of rent The matter of enhancement of rent lies, as is shown in the accompanying memorandum (Appendix I), at the bottom of the whole rent question in Bengal. It is this which really cries for settlement. We are brought sooner or later face to face with this in every attempt to deal with rent suit procedure: and inextricably interwoven with the question of rent enhancement is the question of ryots' rights.

No revision of the rent law can be either satisfactory or lasting which does not face boldly all the difficulties involved in these two great questions. The reason why Act X of 1859 has failed to solve them are set forth clearly enough in some of the appendices of the Rent Commission's Report, and are further alluded to in the memorandum (Appendix I) attached to this letter. The Lieutenant-Governor is not anxious to inflict upon the Government of India a lengthy dissertation on the revenue law and history of Bengal, but it is necessary and due to the importance of the subject that he should state as briefly and clearly as he can the views which he holds on what is known as the rent question, in common, as he believes, with the majority of those officers and publicists who have devoted much time and attention to the subject.

19. The first issue that will always be raised in discussing this matter is as to the position held by the zemindars with reference to the ryots and lands in the occupation of ryots, and the effect of the Permanent Settlement Regulations upon the relative rights of either class. This question has been very fully and ably discussed by Mr. O'Kinealy in his Note printed at page 439 of the Rent Commission's Report, in the general argument of which all the best-informed Revenue officers of Bengal will be found substantially to concur. The point is also very temperately argued in the Tagore Law Lectures for 1875 by Mr. Arthur Phillips (late Secretary to the Government of India in the Legislative Department), who, though approaching the subject from the point of view of an English lawyer, came to the conclusion that the rights of 'actual proprietorship' conferred upon the zemindars by the Permanent Settlement did not make them 'absolute proprietors' or interfere (otherwise than indirectly) with the pre-existent rights of the cultivating class. An extract from Mr Phillips' eighth lecture will be found in Appendix II, together with an extract from the Famine Commission's Report, in which the true theory of zemindari proprietorship is very clearly stated.

20. That the rights of proprietorship conferred upon the zemindars were not 'absolute' rights such as are involved in the notion of proprietary rights in England, may indeed be very safely inferred from the reservation of Article VII of the Permanent Settlement Proclamation, in which it is set forth that, "it being the duty of the ruling power to protect all classes of the people, and more particularly those who, from their situation, are most helpless, the Governor-General in Council will, whenever he may deem it proper, enact such regulations as he may think necessary for the protection and welfare of the dependent talookdars, ryots, and other cultivators of the soil; and no zemindar, independent talookdar, or other actual proprietor of land, shall be entitled on this account to make any objection to the discharge of the fixed assessment which they have respectively agreed to pay." The British Indian Association and others, who maintain the absolute proprietary rights of the zemindars, endeavour to minimise or explain away this reservation, and denounce all legislative recognition of tenant-right in any form as an encroachment upon the privileges and position of the landholders. This contention has, however, been many times repudiated by the Government both here and at home,* and is not likely to command the assent of reasonable men at the present day. The true meaning and intention of the reservation are clear enough in the light of the despatches of the Court of Directors regarding the Permanent Settlement (quoted in Harrington's Analysis, Volume II, pages 189, 191, 192). The Government reserved its right "as sovereign" to "interpose its authority from time to time" as might be necessary to "prevent the ryots being improperly disturbed in their positions or loaded with unwarrantable exactions"—that is to say, as other portions of the Regulations show, to prevent illegal eviction at the pleasure of the zemindar and the exaction of any higher rates of rent than the ordinary *pergunna rates*. The Lieutenant-Governor for his own part has no doubt that the ryots of 1793 had substantial rights of a proprietary character, and although these rights have suffered much from the encroachments of the zemindar, and the neglect and fears of a Government looking mainly to the recovery of the revenue due from its recognised settlement-holders, and therefore uniformly strengthening the hands of the revenue-payers against the rent-payers, the latter are still, he believes, entitled to invoke

* See, for instance, documents quoted in the Appendix to the Report of the Parliamentary Select Committee of 1832

the aid of the ruling power to protect them against arbitrary eviction and unwarrantable exactions. The task is now, of course, more difficult than it would have been in 1792. It is impossible to ignore the losses and gains of 90 years. But if it can be shown that in defining and establishing a reasonable and living tenant-right, no substantial injury will be done to landholders as a class, the Lieutenant-Governor has no hesitation in saying that Government has, under the Permanent Settlement, and notwithstanding all subsequent changes, full power and liberty to legislate for this end, and that it is its duty to do so and to replace the ryots, so far as is now possible, in the position which they held at the time of the Permanent Settlement, and which it was in no way the intention of that settlement to injure. This is the more necessary as their position has in fact been weakened and injured by the nervous disinclination of Government hitherto to take active measures to protect them.

21. The next point for consideration is the definition and limitations of the class of ryots in respect of whom legislative protection is equitable and possible. In the original draft of Act X of 1859, the ryots entitled by the custom of the country to rights of occupancy in their holdings were rightly described as all the 'resident ryots' of the village. The manner in which this provision was converted into an enactment that the right might, in the absence of any contract to the contrary, become that of every ryot who had occupied his holding for 12 years or more, and the practical effect of this enactment, which puts every ryot to the proof of his continuous occupation of each field in his holding, are explained in the appendices to the Commission's Report, and again in the memorandum in Appendix I of this letter. There can be no doubt that this extension of the occupancy right to non-resident ryots was opposed to the custom of Bengal. But the position of the resident ryot was equally without doubt seriously injured by the law of 1859. The right of occupancy was originally inherent in the *status* of the resident ryot, not a matter of mere legal prescription, still less a matter of contract and bargaining between him and his zemindar.

22. The effect of the change was at first but little understood by the zemindars, and no obstacles were, in the greater part of Bengal Proper, thrown in the way of the acquisition of rights of occupancy under the law. The ryots of Bengal had in most districts been able to maintain themselves in something like their old position with reference to their landlords. But in Behar the case was different. There the landlords have always been more powerful and arbitrary, and the ryots more ignorant and helpless; and rights of occupancy have, as a rule, not been allowed by the former; and (in North Behar at any rate) seldom claimed by the latter. "Act X," (writes the experienced Collector of Patna) "has done little for the ryots. * * * Whenever the zemindar has felt himself strong enough to break occupancy holdings, he has done so. The expression among the ryots is, that every one's tenure has been broken except the *Zarwali logue*, or those who were in a position (*i.e.*, rich enough) to resist enhancement and dispossession. * *. The great mass of the tenantry are * * now paying rents which have doubled within the last 16 years." The state of things in Behar has consequently become such as to call for special remedies, to which reference will be made elsewhere. In Bengal of recent years the tendency has been more and more in the same direction. The difficulties attending the legal enhancement of rent in the case of occupancy holdings have drawn the attention of the zemindars more closely to the provisions of the law and manner in which these can be worked to defeat the accrual of occupancy rights. The burden laid upon the ryot of proving his continuous occupation of the particular lands he claims is one which, in the existing state of Bengal rural records, he is seldom able to bear. Then the provision of section 7 of the Act, which gives validity to all contracts intended to defeat accrual of occupancy rights, are fatal to him. The zemindar can very often, by some temporary concession or by pressure, induce an improvident ryot to give a *kabooliyat* (or agreement), the terms of which may be utilised afterwards to defeat his occupancy rights. Such *kabooliyats* have been procured in large numbers in some districts during recent years, and if they have not been more general, this is only because the zemindars as a body have hitherto been trying to secure enhanced rates immediately and directly, and thereby driving the ryots into a

state of active opposition, in which all written engagements are regarded by them with suspicion. Many landlords are now coming to see that an apparently conciliatory and waiting policy will give them more in the end. But nothing is so marked in the memorials from zemindars which have come before this Government as their rooted hostility to the extension, and even to the maintenance, of the occupancy right. At one meeting of zemindars, when it was asked whether it was expedient to confer rights of occupancy on resident ryots with regard to land held by them for three years, the following resolution was unanimously adopted: "This concession is strongly deprecated. At present landowners prevent the growth of occupancy rights by granting leases for five years only, or by changing the lands, or by managing so that a ryot shall never hold at the same rent for 12 years. In practice this last expedient is found sufficient, as the courts find claims to occupancy rights not proved unless the ryot can show that he has held the same land for 12 years by proving that he paid the same rent. Under the proposed law zemindars would not suffer ryots to remain for three years." This somewhat *naïve* confession shows the policy that is now being followed both in Bengal and Behar. "In Bengal," remarks a Collector who knows both Bengal and Behar, "all proprietors and tenure-holders wish to see the present law changed. They desire two things, the limitation or destruction of occupancy or other ryots' rights, and increased facilities for enhancing rents, whether directly or under cover of a law for the summary realisation of rents." In Behar, on the other hand, the landlords are, in the judgment of this officer, (though others differ from him here) content with the existing law which they have been able to work to their own advantage. There are grounds for believing that the lessons of Behar zemindari management have not been lost upon the landlords of Bengal. If the law remains as it is, it is the opinion of very competent observers that in ten years' time there will be few occupancy ryots left. Some experienced officers are of opinion that their extinction is going on rapidly and surely. The conclusions arrived at by the Famine Commission as to the unsatisfactory state of occupancy rights at present in Bengal are quite in accordance with the Lieutenant-Governor's own views, and those of his most experienced officers.

23. The Lieutenant-Governor considers it essential to the agricultural prosperity of the province that the great mass of the cultivators should not be reduced to the condition of mere tenants-at-will. He entirely concurs in the following remarks of the Famine Commission as to the direction which rent legislation in Bengal should take:—

"We can, however, feel no doubt that in all the provinces of Northern India and particularly in Bengal, it is the duty of the Government to make the provisions of the law more effectual for the protection of the cultivators' rights. This opinion is primarily based on the historical ground that they have a claim as a matter of strict justice to be replaced as far as possible in the position they have gradually lost; but it may also be supported on the economical ground that in the case of these large cultivating classes security of tenure must have its usual beneficial effect; and that, as a rule, the cultivators with occupancy rights are better off than the tenants-at-will. Wherever enquiry has been made it has been found that in all matters relating to material prosperity, such as the possession of more cattle, better houses, and better clothes, the superiority lies on the side of the occupancy-tenants, and the figures in the preceding paragraphs also show that, as a rule, they hold larger areas of land. Where the subdivision of land among tenants-at-will is extreme, and in a country where agriculture is almost the only possible employment for large classes of the people, the competition is so keen that rents can be forced up to a ruinous height, and men will crowd each other till the space left to each is barely sufficient to support a family; any security of tenure which defends a part of the population from that competition must necessarily be to them a source of material comfort and of peace of mind, such as can hardly be conceived by a community where a diversity of occupations exists, and where those who cannot find a living on the land are able to betake themselves to other employments.

General object to which new legislation should be directed.

"It is only under such tenures as convey permanency of holding, protection from arbitrary enhancement of rent, and security for improvements, that we can expect to see property accumulated, credit grow up, and improvements effected in the system of cultivation. There could be no greater misfortune to the country than that the numbers of the occupancy class should decrease, and that such tenants should be merged in the crowd of rack-rented tenants-at-will, who, owing no permanent connection with the land, have no incentive to thrift or to improvement. It is desirable for all parties that measures should be framed to secure

The enlargement and strengthening of occupancy right.

the consolidation of occupancy rights, the enlargement of the numbers of those who hold under secure tenures, and the widening the limits of that security, together with the protection of the tenant-at-will in his just rights and the strengthening of his position by any measure that may seem wise and equitable. The suggestions which we now proceed to make for alterations in the existing law, or in the system of administering it, are based on this view, and have for their object the ends thus indicated."

24. The Bill which is now submitted for the consideration of the Government of India declares, first, that every ryot who has acquired an occupancy right under Act X of 1859 or Act VIII (B. C.) of 1869 shall retain that right; but it provides further that every 'resident' ryot shall be deemed to have a right of occupancy in all lands held or cultivated by him. The mode in which the residency of the ryot is to be ascertained and defined will be explained below in connection with the particular section. The Lieutenant-Governor will only say here that he believes nothing short of the widest recognition of the right as inherent in the *status* of all ordinary cultivators will satisfy the ancient custom of the province, or provide a sufficiently broad basis for the welfare of the agricultural community. He is also strongly of opinion that, this extensive recognition of the occupancy right being desirable on grounds of State policy, no private contracts should ever be allowed to defeat it. In making such contracts, the ryot is never an absolutely free agent. He cannot possibly be held to be on even terms with the other party to the contract. No ryot of ordinary intelligence would ever willingly consent to divest himself of the status which he has inherited from his ancestors, and which gave them and him rights of occupancy in the soil of their village. To part with this is to confess himself an outsider and a failure, to sink to the condition of a day-labourer, and to leave his children in the position of beggars. It is impossible to suppose that contracts having this effect are voluntary agreements, however speciously the coercion or deception which brought them about may be concealed. A Note by Mr. Reynolds on the right of occupancy, in the tenour of which the Lieutenant-Governor generally concurs, will be found in Appendix IV.

25. Before passing on from this part of the subject, I am to refer to one provision which is made in the Bill, that is, the Lieutenant-Governor believes, in strict accordance with Indian custom, but which more than anything else perhaps runs counter to English notions of proprietorship. It is provided that, when a ryot abandons his occupancy holding, or when a zemindar buys out such a ryot, the zemindar may dispose of the land as he pleases, but not so as to bar the acquisition of occupancy rights by the next resident ryot to whom he may let it. He may not, that is to say, convert it into his 'home farm.' Now, there are in many estates lands which are recognised as the proprietor's private lands, known as *khamar*, *nijjote*, or *seer* land in Bengal, and as *zerat* in Behar. In these lands, under the present rent law, a ryot may not acquire a right of occupancy so long as the zemindar chooses to let him the land only for a term, or year by year. In such lands the zemindar can always prevent the accrual of rights of occupancy without making any special stipulations against this. Naturally, therefore, the zemindar would be glad to have as much of the land in his estate as possible classed as *khamar* or private land. But there is nothing which village feeling resents more bitterly than the absorption of *ryotee* lands into *khamar*. So generally is the custom of the country recognised in respect of such lands that, if a zemindar wants a plot of land in the occupation of a ryot for a garden or a house, he takes a formal sub-lease of it from the occupant, or purchases the rights of such occupant, and enters himself in the village papers as the ryot (*not* as zemindar) in respect of such plot of ground. The bold assertion now-a-days of high English notions of proprietary rights makes it, however, desirable to throw the shield of positive law over the *ryotee* lands of the village, and this has been done in the present Bill. If the nature and origin of *khamar* land are remembered, the propriety of preventing its arbitrary extension will at once be recognised. *Khamar* was the waste, unreclaimed, or surplus land of the village which the zemindar was permitted to cultivate by contract for his own advantage during the term of his revenue engagement with Government, but which as cultivators settled on it became part of the *ryotee* land of the village In the instructions to the supervisors of land revenue issued in 1769, attention was especially drawn by the Directors to the propriety of *settling cultivators* on these lands "and converting them into ryotee lands." —(See Colebrook's Supplement, page

184.) There is little doubt that most of what is *now* admittedly *ryotee* land was originally *khamar*, and it is only land in which the zemindar has continuously maintained his private and special right that ought at the present day to be recognised as his individual property.

26. The effect of the existence of rights of occupancy upon the zemindar's demand for rent is discussed by the Rent Commission in paragraphs 37 *et seq.* of their Report, and in the judgment of the Calcutta High Court in the Great Rent Case, quoted at page 6 of Appendix I. The simple result is that the occupancy ryot must be recognised as having a beneficial interest in the soil and that his rent cannot be forced up to competition rates. The enquiries made in connection with Sir R. Temple's proposal to fix occupancy rates with reference to competition rates, giving the privileged ryot merely a beneficial reduction on the latter, brought to light the fact that competition has as yet got next to no hold upon the rents of Bengal. In one or two districts near the presidency there is perhaps some little competition for land, but even this is local rather than general, and confined, as a rule, to the village to which the land under settlement belongs. It is not, in fact, what an English economist understands by free competition at all; that is to say, it is not a competition of capital and skill determined by profits, but the rent in such cases is merely (as pointed out by Mr. Justice Phear in the Great Rent Case) the result of the relation of the numbers who want the land on the one side, to the quantity of land on the other; and the numbers who want the land are not determined by the consideration of the profits it gives to capital, but by the necessity of subsistence. The ryots, and the ryots only, want to get the land because it is by the land they live. The competition is only a competition of the *cottier* kind, and the rent thus arrived at can never, unless by accident, be a fair guide for settlement of the rents of tenants with prescriptive rights. Men do not go about here looking for holdings as a farmer looks for a suitable farm at home. Generally speaking, there is nothing like competition for land in the economic sense, even in places where the population is most dense. In the majority of districts the effective demand is still for ryots rather than for land, and even where the land is nearly all taken up for cultivation, custom is still the principle that decides the rent. The rates are customary, and not competitive rates, *however high they may in any particular case be found to be.* Even for holdings that are only let year by year (such as the *utbandi* holdings of Nuddea) the rate is known and ascertained; and if there be any doubt as to who should get the holding, a competing ryot would rather pay a heavy bonus to the zemindar than have a single cowrie added to the customary rate.

27. If this state of things be admitted, and it cannot, the Lieutenant-Governor thinks, be disputed, the question remains how the occupancy ryot's beneficial interest is to be ascertained or determined. Act X sought to lay down principles for the guidance of the courts in adjusting such rents; and these principles are reproduced with slight emendations and elucidations in section 23 of the present Bill. But it is a notorious fact that the courts have failed to deal with the question in any satisfactory manner. The zemindars are dissatisfied because they cannot generally produce legal evidence to prove the many points arising out of the economic problem which such a case presents, while the judicial tribunals insist upon having such evidence. The ryots find themselves harassed by multifarious suits, each man being left singly to fight his own battle; while the varying results of cases serve only to throw doubt and confusion over the prevailing rates which he has been accustomed from his father's time to regard as his inheritance. In Bengal, it is certain that the zemindars have failed to secure in many parts of the country that fair share of the increased value of produce which they are entitled by long use to share. And here, in passing, the Lieutenant-Governor must remark that he does not understand it to be the contention of any member of the Rent Commission, or of any officer of Government, that rent should now revert to the pergunna rates of the Permanent Settlement time, or even that they should now be fixed for ever. There is certainly much evidence in favour of the theory that it was intended at the time of that settlement that the resident ryots should sit for ever at the rates then current, in respect at any rate of the lands then under cultivation. They were all entitled to sit at the

"pergunna rates," and no distinct provision for any periodical and general revision of those rates is anywhere to be found. But the powers given under the sale laws to auction-purchasers, and the absence of any direct legislative protection for the ryots, have made enhancement of rents universal, and it would be inequitable in the highest degree to put a summary stop to this. It is not the desire of Government to deprive any landlord of any part of his present income. On the contrary, the result of the measures advocated by the Lieutenant-Governor would probably lead in most districts to a substantial increment of the incomes of the rent-receiving classes.

28. The conclusion which may fairly be drawn from the state of things at the Permanent Settlement, from the reservation in Article VII of Regulation I of 1793, and from the failure of subsequent events and legislation to bring about a satisfactory settlement, is this, that Government is warranted in interfering to determine the extent of the beneficial interest which should be left to the ryots: and that, so long as it does not confiscate any of the present income of the landlords, it is only (as the Rent Commission put it) fulfilling its high duty and obligation of promoting the happiness and prosperity of the people when it steps in to determine the rents payable in those provinces by the ryots to the zemindars. This view of the duty of the State has been repeatedly urged by Government officers since the time of the Permanent Settlement. To quote only one, Mr. Bird, whose authority as a revenue officer in the North-Western Provinces was eminent in his day, wrote thus: "I claim on behalf of the ryots the *right* founded on the most ancient authentic records and uninterrupted prescriptive usage through a succession of Governments, native and foreign, from ancient times to our own, to have their payments fixed by the direct authority of Government." There is practically no other way of satisfactorily regulating rent in this country, especially where the increased value of produce is involved. The remarks of the Rent Commission on this matter in paragraph 67 of their report are entirely to the point. The conclusion involved was indeed frankly accepted by the zemindars themselves when their representative moved in the Bengal Council for leave to introduce a Bill under which Government officers should settle rents in the same manner as revenue is assessed in temporarily settled and Government estates. (See page 51 of Appendix I.) Not indeed that the enhancement of rent or revenue in Government estates or in estates under settlement is now-a-days in Bengal at all a simple or an easy process. The manner in which the civil courts have dealt with enhancement has interfered as seriously with assessment of the State demand of revenue as with the zemindar's claim to share in the unearned increment of the land. In Appendix III will be found a letter from the Board of Revenue, No. 357½ of the 3rd June 1881 (already submitted to the Government of India), explaining very fully the practical dead-lock to which matters have come. The Lieutenant-Governor has said in my letter forwarding the Board's report (which will also be found in that appendix) that the same remedy is called for both in the interests of Government and of the zemindars. The settlement of rent must be once more entrusted to the control and direction of the revenue officers, who alone are able to bring to bear upon it economic knowledge and experience, and to test the contentions of opposing parties by intelligent local enquiry and collateral evidence of various kinds that could never be brought in any useful form before a civil court.

29. The procedure devised by the Rent Commission for the enhancement of rent introduced the alternative agencies of both the civil courts and the revenue authorities in a manner which has been universally condemned as too complex for practical working. In the Bill now presented the solution of the economic problems involved in rent settlement is provided for in what seems a simple and rational way. All officers experienced in settlement work agree that each neighbourhood has its recognised classification of soils, and that the current rates paid for each class of land per *bigha* are ordinarily well known and undisputed. The revision of these rates to meet altered circumstances of prices and productiveness could be made without going into minute enquiries as to the facts of each ryot's holding. A preliminary local enquiry would first determine into what homogeneous circles a tract under settlement should be divided—that is to say, for what villages separate tables

of rates would have to be made. Then would follow investigations as to the existing rates prevailing in each circle, the ratio which they bear to produce, the time during which they had been current, and the like: and, finally, the question of the fair rates now payable in view of the increased value of produce, or improved productiveness of the land, would form the subject of enquiry in the presence of all interested. In this enquiry the fact that the rents of individual ryots had already been raised either by agreement or by decree of court would of course be taken into account, but the object would be to arrive at such roughly equitable rates as could be adopted generally throughout the circle affected, without serious injury to either landlord or ryot, and with due regard to all the principles laid down in the law of rent enhancement. If zemindars seeking to enhance their ryots' rents choose to employ the courts as at present, they would be left at liberty to do so, unless and until Government takes up the question of rent settlement in any particular tract. This matter of rent settlement will ordinarily be entrusted to a sort of District Commission, consisting of the Collector of the district, assisted by assessors. The judicial officers in charge of the special rent courts above referred to would be generally appointed to be members of these commissions; and carefully chosen Deputy Collectors would also be set apart for the work, and transferred from district to district as required, so as to bring to bear upon the settlement of rates the experience of different parts of the country. The Lieutenant-Governor sees no reason why the Local Government should not be able in this way to provide an agency which should in the course of a reasonable number of years determine the equitable rates of rent payable in all districts of Bengal, with due regard to existing rents, the increased value of produce, and other things. There can be no doubt, as already remarked, that in most districts these operations would largely increase the incomes of the zemindars. The ryots would, however, be protected by all the reservations and limitations suggested by the Rent Commission; the enhancements would be moderate, and at the same time authoritative; and the general result should be the removal of much cause of friction as between landlord and tenant, and the establishing of the beneficial interest of the occupancy ryot, and, consequently, of the agricultural prosperity of Bengal, upon a definite and permanent basis. Apart from this, one valuable indirect result would be that the revenue officers of the province and the Government itself would acquire that intimate knowledge of rural economy and statistics which the Permanent Settlement originally did much to impair, and the revival of which the transfer of rent suits to the civil courts has done much to retard.

30. It is only, however, if the occupancy right is placed upon a broad, simple, and uniform basis, that the Government could hope to undertake, with any prospect of success, such an extensive operation as that of settling the rents of Bengal. The conditions of the problem must be made as little complex as possible, and it is fortunate that the tenacity of Indian custom has still preserved, in the prevailing rates of a vicinity, so much of the old theory of pergunna rates of rent, as to make it comparatively easy to rehabilitate these on a well co-ordinated plan without upsetting unduly or generally existing arrangements. If the great mass of the cultivating ryots are recognised as having occupancy rights, as they certainly would have under the old law and custom of India, the necessity of providing for many differing classes of ryots' rents ceases to exist. No ryots, other than the few entitled to hold at rents fixed for ever, will then be regarded as specially privileged in the matter of rent. Every occupancy ryot will have his beneficial interest preserved to him, and be in a position to improve his holding and raise his standard of comfort by his own exertions. As was truly remarked by the present Prime Minister when introducing the Irish Land Bill—"Legislative interference for the regulation of rent cannot by any possibility be severed from legislative interference for the regulation of tenure and from the regulation of the principle of tenant-right." Legislation for the regulation of rent has for years been clamoured for by the zemindars. It does not appear to the Lieutenant-Governor possible to attempt this in any effective form, unless the tenant-right of the ryot is once for all placed upon a broad and secure footing, and the extent of his beneficial interest once for all authoritatively defined.

31. The Lieutenant-Governor believes that no better time than the present could be found for the amendment of the rent law of Bengal. It is suggested, in the memorandum in Appendix I (page 39), that the true reason why the rent disputes which culminated in open violence in 1873 have of late years to all appearance quieted down is because both parties have been awaiting the action of Government in connection with the substantive amendment of the law. That is, in Sir Ashley Eden's opinion, a correct diagnosis of the position. All the elements of disturbance are still existent, and the Lieutenant-Governor would strongly advise the Government of India to have the rent question settled in Bengal, while the country is tranquil, while seasons are favourable and the people well off, and reason can make its voice easily heard; rather than allow things to drift on until another famine, or a second outbreak of the Pubna ryots, compels the Government to take up the subject with all the haste and incompleteness that too frequently affect measures devised under circumstances of State trouble and emergency.

Part III.

32. It only remains now to explain the detailed changes made in the Bill which I am directed to submit for consideration. The Lieutenant-Governor has, as already said, accepted the draft Bill of the Rent Commission as the necessary basis of any revised rent law. Where the proposals embodied in that draft have met with general acceptance, or where the arguments put forward by the Commission in support of their proposals are undoubtedly stronger than any that have been urged against them, it has not been thought necessary to repeat below what has already been sufficiently well stated in the Commission's report. The Lieutenant-Governor may be understood to accept any matter in that report as to which he does not specifically express either dissent or doubt. Where, however, any departure from the Rent Commission's work has been made, or where their suggestions have only been accepted after discussion and deliberation, the reasons for the conclusions finally arrived at by this Government will be found briefly noted below:—

Number of section in the Commission's Bill.	Number of section in the Government Bill.	Remarks and Explanations.
		Preliminary.
1—2	1—2	No change in the title, local extent, or repeal sections, save that the non-application of the Act to the Town of Calcutta is made clear.
3	3	(1)—*Definitions.*—The definition of 'ryot' is amended, so as to show that the ryot must have been 'let into possession' by a 'proprietor,' or 'tenure-holder,' or 'under-tenure holder;' otherwise there would be no distinction between a 'ryot' and an 'under-ryot.' The definition is also amended to cover the holding of grass and fallow lands, as well as lands in actual cultivation. (2)—Definitions of "*khamar, nij-jote,* and *seer* lands," and of '*ryotee* lands' have been added. The principle of these definitions is explained in paragraph 25 of part II of this letter. (3)—The definitions of 'lease' or 'potta,' and of 'kabuliyat' are amended in accordance with the recommendation of many officers by substituting the word 'declaring' for 'continuing' the relation of landlord and tenant. (The relation is generally pre-existent to the formal deed.) (4)—A definition of 'Behar' for the purposes of Chapter XI is inserted. (5)—'Chapter' is defined to be a chapter of this Act.
4—5	4—5	No material change in the sections saving custom, &c., and setting forth the divisions of the Act.
		Chapter I.—Of Tenure-holders and Under-tenure holders.
6	6	See the remarks in Mr. Reynolds' memorandum (pages 2 and 3) on this section. Mr Reynolds proposed to do away with the presumption (created by Act X of 1859) that the production by a tenant of proof of an unvarying rent for 20 years before suit, should throw on the landlord the *onus* of proving that the rent had been actually changed since the Permanent Settlement, or that the tenure or holding had been created, or the rent fixed at some later period. The officers consulted upon Mr. Reynolds' Bill have been all but

Number of section in the Commissioner's Bill.	Number of section in the Government Bill.	Remarks and Explanations.
6 *contd*	6 *contd.*	unanimous in condemning the proposed change in the law, which was to the effect that the year 1839 (*i.e.* 20 years before the passing of Act X of 1859) should be taken as the date back to which the tenant should be required to prove an unvarying rental. This proposal would have laid on all tenants, as time went on, an ever increasing burden of proof, and it would probably be impossible, even now, for any small tenant to resist a suit by his landlord were that suggestion accepted. The law has led tenants to think that the preservation of 20 years' receipts was all that was necessary for their protection. To change this summarily now, and demand receipts for 40 years, would be most unjust. Moreover, there are strong grounds for believing that, since the creation of this presumptive prescriptive title, the question as to what tenants are entitled to hold at fixed rates has been generally brought to issue in the courts by the zemindars. Such tenures and holdings are in most estates now well known and recognised. Looking to the constant struggle for enhancement that has been going on during the last 20 years, it may fairly be argued that if a tenant's rent has not been changed in that time, it is because he either has admittedly the right to sit at fixed rates, or has succeeded in establishing such a right. The Lieutenant-Governor is disposed to think that the best way of remedying any injustice to landlords arising from the presumption, would be to provide for the registration of all existing privileged tenures within (say) two years from the passing of the Act; and then to do away with the presumption altogether. But in any case it should be remembered that the presumption is one which, if unjustifiably put forward, the landlord ought generally to be able easily to rebut. Proof of a single variation of the rent is enough for this.
		A further proposal in Mr. Reynolds' Bill was that the presumption might not be so much as pleaded against an auction-purchaser at sale for arrears of revenue, unless the fixity of the tenure had been formally declared by a previous suit in court. Even those officers who support the first modification object to this. No man need become an auction-purchaser unless he likes: and the danger that zemindars would allow their estates to go to sale in order to destroy the privileged tenures, and then repurchase them under fictitious names, is so real and consonant with experience that no Government officer of those consulted ventures to support the proposal.
		The Lieutenant-Governor has therefore restored this section to the form drafted by the Rent Commission, repeating only the *explanation* from section 17 of the Commission's draft.
7	7	No change is proposed in the law of enhancement applicable to tenures held since the Permanent Settlement.
8	8	This is the section dealing with alluvion and diluvion, and consequent enhancement and abatement of rent, in the case of tenures (see Mr. Reynolds' memorandum, pages 3 and 4). The Rent Commission made the increase or abatement of rent proportionate to the increase or diminution of area. This has been objected to, on the ground that the area gained or lost may be more or less valuable than an equal area of the rest of the tenure. Mr. Reynolds' Bill proposed to regulate the rent by the increase or loss of assets.
		The Lieutenant-Governor has no doubt that assessment according to rent-paying capability is, in the case of alluvion, the proper principle to follow. The substantive law is contained in section 4, Regulation XI of 1825, under which alluvion is "considered an increment to the tenure of the person to whose land it is thus annexed; but such person shall not be considered exempt from the payment of any increase of rent to which he may be justly liable." This rent is to be assessed on the analogy of the assessment of the public revenue to which the increment is also liable. Now, land added to a permanently-settled estate is assessed to revenue at the full amount at which such land would be assessed with reference to its rent-paying capability, if it were part of a temporarily-settled estate. In the absence, therefore, of any express contract to the contrary, land really added to a tenure, and which formed no part of its area at the time of its creation, should apparently be assessed at the full rates that might be paid for it by ryots having occupancy rights, less the usual allowance to the tenure-holder as farmer for the risk and trouble of collection. This really gives the tenure-holder more than he anticipated when he took his tenure. The land revenue being assessed with reference to the full *ryotee*

Number of section in the Commission's Bill.	Number of section in the Government Bill.	Remarks and Explanations.
6 *contd.*	6 *contd.*	rental of the land, the tenure-holder must obviously pay to the zemindar what will enable the latter to meet the State demand, he himself benefiting by receiving farmer's profits on lands he never expected to hold. Again, in accordance with the principles of the recent rulings of the Privy Council in cases of re-formation, the tenure-holder is entitled to all lands re-forming on sites that formed part of his original tenure, if he has had no abatement of rent on account of the prior loss of such lands. For all true additions to his tenure he is bound to pay. The *onus* of showing that land is a re-formation on an old site should apparently lie upon him. The section has been re-cast upon these principles in accordance with the recommendation of Mr. Dampier, Senior Member of the Board of Revenue, and President of the Rent Commission. In the case of diluvion, the amount of rent payable on the area lost was the subject of the contract calling the tenure into existence (which the rent on accretions of course was not) ; and it is therefore impossible to settle the equitable amount of abatement in such cases without reference to the incidence of the rent of the tenure on its whole area. Abatement of rent therefore on account of diluvion should be regulated, as a general rule, by reference to the proportionate loss of assets ; but as there may be difficulty in ascertaining these at times the Commission's test of area is preserved as an alternative measure.
9	9	This section lays down the limits of enhancement of rent for tenures and under-tenures. Where no customary rate exists in the neighbourhood, up to the standard of which the rent might be raised, the Rent Commission proposed to fix the *maximum* profits of the tenure-holder at 30 per cent. of the balance remaining after deducting from the gross rents payable to him the cost of collecting them. Mr. Reynolds provided for the existence of specific contracts between proprietors and tenure-holders, and reduced the maximum to 20 per cent. On the whole, the Lieutenant-Governor has thought it best to revert to the 30 per cent. of the Rent Commission, which is, after all, only a *maximum* rate, and not intended to be a general rule The circumstances of tenures vary so greatly that it is safest to retain in the law that limit which covers beyond doubt all existing cases.
12	10	This section preserves to the holder of a reclaiming tenure or under-tenure a minimum rate of profit of 20 per cent of the balance above mentioned. It is generally approved. The custom of Bengal has always dealt liberally with reclaiming tenure-holders and cultivators.
10	11	The further limitations on enhancement provided here are, as shown in Mr. Reynolds' memorandum (pages 4 and 5) generally approved by Government officers, and are strongly opposed only by the extreme section of the zemindari party. The enhanced rent is not to be more than double the old rent unless the ground of enhancement be increased area under section 8. The Commission allowed the courts to make the enhancement gradual or progressive in any case. The Lieutenant-Governor would restrict this to cases where there would be hardship in giving immediate effect to the full increase. The rent so fixed is not to be altered for ten years. The Famine Commission think rents should be fixed for thirty years. And, indeed, the term of ten years does appear somewhat short. The Lieutenant-Governor would not object to seeing it doubled.
11	...	This section, declaring that any person taking more than 100 bighas of land in single demise otherwise than for a term or year by year was to be deemed a tenure-holder and not a ryot, has not been omitted for the reasons given in Mr. Reynolds' memorandum (pages 5 and 6). Admitting all the difficulties of determining in certain cases whether tenants are to be treated as tenure-holders or ryots, as discussed in paragraphs 13 *et seq.* of the Commission's Report, the Lieutenant-Governor is still not prepared to accept the conclusion arrived at by them in paragraph 21, and to take area as an absolute test of status. The proposal has met with very general opposition. It would have effected a legislative revolution over large tracts of country, for which the advantage to be conferred by it upon the actual cultivators would have been but doubtful compensation. The Lieutenant-Governor has preferred to leave the question of status to the courts for decision, in the manner provided by section 168 of the Government Bill; declaring further in clause *(e)* of Explanation IV of section 19, that nothing shall interfere with the enjoyment of any customary rights

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		possessed by the under-ryots of a ryot having a right of occupancy, where the holding of the latter is more than 100 standard bighas in area It is found that, as a matter of fact, in those districts where large *ryotee* holdings are the rule, the under-ryots have by district custom *quasi*-rights of occupancy and certain privileges as to rates. These it seems desirable to preserve, and apparently district custom is in such cases clear enough to warrant such reference to it. It would, however, meet the case more fully if the Lieutenant-Governor were empowered by section 131 to direct that, when a table of rates is drawn up for occupancy ryots by revenue officers, such tables may also show the rates fairly payable by the under-ryots of occupancy ryots whose holdings are more than 100 bighas in area.
13-15	12-14	No change is proposed in the sections stating the legal incidents of a patni taluq and other similar under-tenure Opinions are, on the whole, in favour of incorporating the patni law in the Bill.
		Chapter II.—Of Ryots entitled to hold Land at fixed Rates
16	5	No change is proposed in the position of ryots holding at fixed rates from the Permanent Settlement.
17	16	The Commission's section, which was altered by Mr. Reynolds in the same manner as section 6, has here been restored for the reasons given in the remarks on section 6.
...	17	The legal incidents of a holding at fixed rates have now been defined in the law. As it is proposed to allow the tenant of a ryot holding at fixed rates to acquire rights of occupancy, the holding itself is made saleable as a *tenure*. Such holdings are in fact tenures rather than *ryotee* holdings.
18	1	The alterations made in this section, regulating enhancement and abatement for alluvion and diluvion respectively, are analogous to those in section 8.
		Chapter III.—Of Ryots who possess a Right of Occupancy.
19	19	The Lieutenant-Governor has explained, in Part II of this letter, the general policy which he advocates in the matter of occupancy rights, and his reasons for considering the provisions of the Commission's Bill insufficient to meet the exigencies of the present day. The great majority of the Government officers consulted are in favour of any measure which would secure these rights to the mass of resident cultivators. Originally there was no difficulty in deciding who were or were not resident cultivators. The 'village,' which was the unit of reference, had in former days ordinarily only one landlord. The resident ryot of the 'village' was therefore, as a rule, the resident ryot also of the "estate.' "But (as Mr. Reynolds remarks) the subdivision of property, and the great multiplication both of villages and of estates, have made this simple test inapplicable to the circumstances of the present time. To say that the right shall attach to those resident ryots of the village who live on the estate of the proprietor whose lands they cultivate, would not only exclude many who might fall within the principle of the old definition, but would enable an unscrupulous landlord to evade the law altogether by refusing to let homestead lands to his ryots. The spirit of the rule which required residence in the village will perhaps be best preserved by fixing a limit of distance," as suggested by the experienced Native Judge, Baboo Brojendro Koomar Seal in the Note printed at page 494 of the Proceedings of the Rent Commission" Following this suggestion, Mr. Reynolds proposed to declare that the right of occupancy belongs to every ryot having his fixed habitation in the village or estate in which he holds or cultivates land as a tenant; or whose fixed habitation is within a distance of two miles from the lands which he holds or cultivates as a tenant. In putting forward this proposal, Mr. Reynolds admitted that the introduction of "the estate" as one of the factors in the definition covered a wider area than the old definition The Lieutenant-Governor thinks that it covered too wide an area altogether. An estate may be of vast extent embracing the greater part of a district Moreover, the absence of any definition of what constituted a 'fixed habitation' left too much room for doubt and dispute. After carefully considering all the criticisms passed upon Mr. Reynolds' draft section, and the other proposals put forward in various quarters, the Lieutenant-

Number of section in the Commission's Bill.	Number of section in the Government Bill.	Remarks and Explanations.
19 *contd.*	19 *contd.*	Governor has come to the conclusion that the resident ryot should be defined to be "a ryot who has his fixed habitation in the village within which he holds or cultivates land as a tenant, or who has held and paid rent for the lands in respect of which a right of occupancy is claimed by him for three successive years or more, provided that such lands lie within a distance of not more than two miles of his fixed habitation"; and that a ryot should "acquire a fixed habitation by residing within the same village for three years or more." The local circumstances of Bengal require that an arbitrary definition of the term "village" should be adopted, and in accordance with the suggestion of the most experienced revenue officer in these provinces, the Senior Member of the Board of Revenue, now concurred in by Mr. Reynolds himself, it is proposed to say that for the purposes of the section "any number of villages which are included in the village maps of the revenue survey of Bengal within one and the same exterior boundary, shall be deemed to be one village." It is believed that these proposals will place the right of occupancy as nearly upon its traditional footing as is possible at the present day, while a sufficient check will be imposed upon the intrusion of mere temporary squatters. Mr. Reynolds' draft Bill omitted to maintain specifically rights of occupancy already acquired under the existing law. A clause providing for this has been added to the section. Further, as it is proposed, for reasons to be explained below, to make occupancy holdings transferable, it becomes necessary to determine the status of transferees who might not be occupancy ryots. The Lieutenant-Governor thinks it undesirable to recognise the existence of the occupancy right in the case of persons who do not come under the definition of *ryots* as given in the Bill; and where these are not actually *resident ryots* he thinks it right to require the written consent of the landlord to the continuance in their favour of the occupancy right. These provisions will meet, so far as appears reasonable, the objection to transferability urged by many landlords, that it may lead to the transfer of holdings to the hands of non-resident money-lenders or to the tenants of hostile zemindars. Clause (*b*) of Explanation 3 in section 19 of the Commission's Bill has been omitted, inasmuch as section 11, on which it depended, has been struck out. Clause (*c*) of the same Explanation which recognised a right of occupancy in the under-ryot of any occupancy ryot when holding otherwise than for a term, or year by year, has also been struck out. It certainly only represents the existing law; but, as a matter of fact, the existence of occupancy rights in the case of under-ryots has not been generally acknowledged in Bengal. (The only exception is in the case of those under-ryots, holding under large jotedars in a few eastern districts to which reference is made in the remarks above upon section 11 of the Commission's Bill.) It is admitted on all hands that it is desirable to check the practice of sub-letting by ryots. The policy of the law should be to encourage the growth of a substantial cultivating class, and to discourage the conversion of men originally cultivators into mere middlemen, or speculators in rent. But absolutely to invalidate all sub-leases to under-ryots would run counter to the present custom of every district in the province. Without repeating what is said by the Rent Commission in paragraph 28 of their Report, and by certain members of the Commission at pages 465, 466, and 495 of their Proceedings upon this question of sub-letting, the Lieutenant-Governor will merely remark here that he entirely agrees with the argument that it is hopeless in a matter of this kind to think of changing the whole face of the country by statute law. The law should be so shaped as to stimulate the voluntary adoption of sound principles by the classes affected by it: but beyond this it does not seem possible to go. What is proposed now, therefore, in the matter of sub-letting is this.—To declare that a ryot having a right of occupancy may not sub-let his holding or any part of it without the written permission of his landlord. If, however, he does sub-let without such permission, he shall be bound by his own act, so far as his relations with his under-ryot are concerned, but the landlord will be at liberty to distrain the under-ryot's crops for the ryot's arrears of rent (section 71). It is further provided that the money-rent of a non-occupancy ryot (which would, of course, include all under-ryots) shall in no case exceed 35 per centum of the average annual value of the gross produce of the land held or cultivated by him, calculated as provided for the case of occupancy ryots (section 30)

Number of section in the Commission's Bill	Number of section in the Government Bill	Remarks and Explanations.
19 *contd.*	19 *contd.*	As the maximum rent of an occupancy ryot is to be limited to 25 per cent. of the value of the gross produce, the margin between such maximum and the maximum rent of a non-occupancy ryot is all that an occupancy ryot could feel certain of gaining by sub-letting, while it would—looking to the further risk of his landlord's distraining the under-ryot's crop—pay him better to keep the land in his own hands. Clause (*f*), Explanation 4 of the Commission's Bill, barring the acquisition of rights of occupancy in certain cases by under-ryots is modified to correspond with the changes in clause (*c*) of Explanation 3, already described, and is at the same time supplemented by the saving clause adverted to above to meet the custom of certain eastern districts. To clause (*g*) of Explanation 4 (clause (*f*) of the Government Bill) is added the proviso referred to in paragraph 25 of Part II of this letter, preventing the conversion of *ryotee* lands into *khamar*, *nijjote*, or *seer* land, in such manner as to mar the acquisition of rights of occupancy therein, and preventing the loss of any rights in *khamar*, *nijjote*, or *seer* land which the law may otherwise give.
	20	The reasons which have led the Lieutenant-Governor to support the proposal that no contract shall debar a ryot from acquiring a right of occupancy in *ryotee* lands are explained in paragraph 24 of Part II. The Rent Commission would only allow a contract written and registered when the ryot was first let into possession to defeat the accrual of occupancy rights. The landlords, of course, oppose any limitation of their right to protect themselves by contract. The great majority of Government officers, and those who advocate the ryots' interests take the view which has the Lieutenant-Governor's support. The point must be decided upon broad grounds of State policy. Neither party is likely to convince the other.
20	21	In this section the legal incidents of the occupancy holding are set forth. The Rent Commission's draft made it saleable in execution of any decree passed for arrears of the rent thereof, but not "in execution of any other decree." This was in harmony with their view that, though transferable by private sale, the holding should not be mortgaged. On this point, and generally on the question of transferability, a reference is requested to pages 10-12 of Mr. Reynolds' memorandum. The Lieutenant-Governor has no doubt himself that in view of the provisions of clause (3) of section 19 of the Government Bill, there is no danger in allowing free transfer, mortgage and sale in execution of any form of decree. There is, indeed, an inconsistency in Mr. Reynolds' Bill which, while withdrawing the prohibition against mortgage, yet retained the prohibition against sale under an ordinary money-decree. The weight of opinion among those consulted is in favour of allowing mortgage, as often better for the ryot than sale. So long as the right of occupancy is limited as now proposed, the Lieutenant-Governor can see no objection to this. The clause forbidding mortgages is therefore omitted. As regards the general question of allowing transfers of holdings among the cultivating class, the further enquiries made on information gained during the last two years have confirmed the Lieutenant-Governor in his conviction (expressed in the letter printed at page 45 of Appendix I) that free transfer is desirable, in the interests of both landlords and tenants, and is in full accordance with the existing practice of these provinces. These holdings are sold by thousands every year in execution of civil court decrees, as returns received through the High Court show, without any objection being raised on the part of landlords. In the Government estate of Khorda, where, under local custom, free transfer has been allowed for many years, the recent settlement has brought out the fact that the average size of holdings has increased, a clear indication that the tendency of a system of free transfer is to throw the land into the hands of the well-to-do among the cultivators. The weight of opinions received is decidedly in favour of recognising in the law what is an almost universal custom of the province: and, as already shown, the Lieutenant-Governor by restricting the occupancy right to the ryot class, practically restricts transfers to men of that class. Any other person may buy, but to retain the occupancy right he will have to become a ryot, and, if not a resident ryot, will further have to secure the consent of his landlord.

Number of section in the Commission's Bill.	Number of section in the Government Bill.	Remarks and Explanations.
20 *contd.*	21 *contd.*	A clause (*d*) has been inserted from Act X of 1859, declaring that a ryot having a right of occupancy is entitled to sit at a fair and equitable rate, and that the rent previously paid by him is to be presumed fair and equitable until the contrary be shown. In clause (*e*) it is provided that no occupancy ryot shall be ejected, even for breach of a stipulation providing for ejectment, unless the court is satisfied that the injury is such as to justify eviction and cannot be measured by damages. This is in accordance with recent decisions in analogous cases by the courts at home, and with the views of Mr. O'Kinealy, and, to some extent, of Mr. Field, noticed in paragraph 34 of the Commission's Report.
21	22	This section limits the rent of any occupancy ryot when paid in kind (or by making over the money-value of a certain proportion of the actual produce) to one-half of such gross produce in the case of staple crops. It only applies to cases where the ryot receives no assistance of any kind from his landlord in producing the crop: and in such cases 50 per cent. of the produce is the very maximum rent allowed by the custom of the country. Hence the Lieutenant-Governor has struck out the clause in Mr. Reynold's Bill allowing contracts for a higher proportion. Where the landlord assists the ryot, or where the crop is other than a staple crop, contract is allowed free scope in the division of the produce.
22	23	This section specifies the grounds upon which the rent of an occupancy ryot may be enhanced, with minor modifications (explained by Mr. Reynolds at page 13 of his memorandum). It stands as in the Commission's Bill, save that in grounds (3) and (4) words have now been inserted to enable the ryot to raise an issue as to whether the "time" selected by the landlord for purposes of comparison was fairly selected, and not a year of undue depression and abnormally low markets.
23	24	The limitations to enhancement are here set out. The modifications of the Commission's section, unimportant on the whole, are explained in Mr. Reynolds' memorandum, page 14. It has now been made clear that all the clauses are to be read together. On the whole (except from the landlords) the proposals of the Commission have met with very general support, and the Lieutenant-Governor accepts them. He thinks the proposal to divide equally the unearned increment between the landlord and the ryot meets very fairly the equities of the case. He approves, on grounds of public policy, of barring enhancements over 100 per cent. of the former rent, and he strongly supports the rule that an occupancy ryot's money-rent shall never be more than one-fourth of the average annual value of the gross produce. The British Indian Association were at one time quite willing to accept that as the general standard of rent (see page 42 of Appendix I), and there can be no doubt that a uniform rent of one-fourth the produce would give the zemindars in most districts vastly increased incomes. It would certainly bring about agrarian revolution in Eastern Bengal to lay down any such uniform standard. But the Lieutenant-Governor thinks there can be no objection to accepting that percentage as an ultimate maximum standard. If 50 per cent. of the produce is to be the maximum when rent is paid in kind, 25 per cent. is a fair equivalent where the ryot takes all the risks of bad seasons. It is far more than is now paid in very many districts. There is a peculiar fitness in adopting this proportion as the maximum rent of the occupancy ryot, inasmuch as it exactly corresponds to the *rebba*, or money rental, taken by the Mogul Governments as the State share of the produce (see Phillips' Tagore Lectures, page 70 and authorities cited).
25	25	No material change is made in the section regulating abatement of rent in the case of an occupancy ryot.
		[Chapter IV (Commission's Bill).—Of Ryots who have held Land for three or more, but less than twelve years.]
...	...	This chapter of the Commission's draft has been omitted from the Government Bill. It was generally disapproved as introducing unnecessary complications and multiplying needlessly the classes of ryots. In the Rent Commission itself it was only accepted by way of compromise between conflicting views. If the occupancy right is placed upon the broad clear basis above advocated, it becomes quite unnecessary to provide for a class

Number of section in the Commission's Bill	Number of section in the Government Bill.	Remarks and Explanations.
		of ryots who are neither exactly occupancy ryots nor exactly tenants-at-will.
		Chapter IV.—Of Ryots who do not possess a Right of Occupancy.
32-35	26-29	See Mr. Reynolds' memorandum, page 15, where these sections are discussed.
...	30	In Mr. Reynolds' Bill it was proposed to fix the maximum rent of an under-ryot at 30 per cent. of the gross produce, and at not more than 25 per cent. over the rent paid by his ryot-lessor to the landlord above. The Lieutenant-Governor fears that in districts where occupancy rents are low, the last named limitation would seriously upset existing arrangements. He prefers, for reasons already stated, to impose some discouragement upon sub-letting by limiting the money-rent of all ryots and under-ryots not having rights of occupancy to (say) 35 per cent. of the gross produce. At present the rents of non-occupancy ryots, whether paid in kind or in money, do not ordinarily differ from those of occupancy ryots. It is only the *korfa* or under-ryot who pays a very high rental; and he is in fact little better than a labourer who pays himself out of the produce of the fields he tills, making over all the rest of that produce to his landlord-employer. As the occupancy right will, if the Lieutenant-Governor's proposals are accepted, become the right of the great mass of the cultivators, there does not appear to be any objection to accepting a differential
...		rate for the money-rental of those non-occupancy cultivators, who will not be covered by the definition of resident ryots, while the recognition of a legal maximum will be a positive boon to the *korfa* or under-ryot. It is not proposed to fix a legal maximum for rent paid by such a ryot in kind, for custom gives the landlord in such cases half the crop, and the tenant cannot ordinarily afford to pay more. It would, however, often be advantageous to the landlord to transfer all risks to the tenant and take a money-rental not exceeding 35 per cent., while the tenant would, even if he paid this maximum money-rent, find his status raised and have a stronger motive for improving his land.
		Chapter V.—Of the use of Land for building Purposes.
36-42	31-33	A large portion of the Commission's draft chapter has been struck out for the reasons explained in Mr. Reynolds' memorandum, pages 15 to 17. To section 31 of Mr. Reynolds' Bill has now been added a clause providing a penalty for contravention of the provisions of the section.
		Chapter VI.—Of Merger.
43-45	34-36	The provisions of this chapter are generally approved. Words have been added to section 35 which will have the effect of preventing the conversion of *ryotee* land into *khamar* by means of merger.
		Chapter VII.—Of the Registration of Transfers of Tenures, Under-Tenures and Occupancy Holdings.
46-54	37-46	This chapter also meets with general acceptance See Mr. Reynolds' memorandum, pages 18 and 19, for explanation of some changes made.
	38	In section 38 of the Bill now submitted, which allows the landlord to buy in an occupancy holding transferred by private sale against his wish, provision has been made for a reference to the civil court to fix a fair price in certain cases, and the fact that the holding remains *ryotee* land is made clear.
47-49	39-41	At the suggestion of the Board of Revenue and others, the maximum fees and penalties in the case of transfers of occupancy holdings have been lowered to a small amount
50-51	42-43	As these sections presuppose a knowledge of the transfer on the landlord's part, he is required to give notice to the tenant in possession to come in and register before he is allowed to attach the tenure or holding. This seems a necessary safeguard against oppression.

Number of section in the Commission's Bill	Number of section in the Government Bill.	Remarks and Explanations.
		Chapter VIII.—Of Rent, Instalments of Rent, Receipts for Rent, Deposit of Rent, Apportionment of Rent and Hypothecation for Rent.
55-56	47-48	The section for regulating the payment of rent has been entirely recast in the Bill now submitted. Instead of fixing instalments and days of payment in the law, it has been thought desirable to leave the Board of Revenue to regulate such matters by notification, in accordance with the custom and harvests of each district. The Commission's proviso has been restored in section 48, as it seems fair to make an exception to the uniform exaction of penal interest on arrears of rent, in cases where default was due to causes beyond the tenant's control.
57	49	This section provides for rent-receipts and statements of account. The changes made in the Commission's draft are chiefly minor ones based on suggestions made; but clause (*b*) of the section is new. This provides that every receipt which does not contain the required particulars shall be deemed to be an acquittance in full up to the date of its delivery. Some such sanction as this is thought necessary by many officers of experience. Mr. Reynolds was in favour of doing away with counterfoils, but the proposal has met with disfavour and is abandoned.
58 to 61	50 to 53	*Deposit of rent*.—The changes made here are explained in Mr. Reynolds' memorandum, pages 20 and 20.
62 to 63	54 & 55	*Apportionment of rent*.—No remarks are called for.
64	56	*Hypothecation for rent*.—The suggestion in paragraph 133 of the Commission's report, giving the landlord a prior claim to proceeds of execution sales until his demand of rent is satisfied, has been adopted in this Bill.
		Chapter IX.—Of Coparceners.
65 to 70	57 to 62	See Mr. Reynolds' memorandum, pages 22-23. The Lieutenant-Governor entirely approves of this chapter, and considers it necessary. The slight change made in section 57 barring applications from unregistered coparceners and persons out of possession, is in accordance with the general policy of all the Bengal Acts since the passing of Act VII (B.C) of 1876.
		Chapter X—Of some Miscellaneous Rights of Landlords and Tenants.
71 to 74	63 to 66	No change.
75	67	This section has been modified so as to give landlords the right to measure all lands lying within the limits of their estate or tenure whether rent-paying or not. A landlord has at present no right to measure lakhiraj, and a rent-free holder may, in virtue of a valid grant of ten bighas, be holding double as much or more. The mere measuring by the landlord cannot harm him, as he could not be ousted from possession save through the civil court. But the landlord seems entitled to make a complete survey of his estate.
76	68	No change.
77	69	The second clause of this section, as drafted by the Rent Commission, gave the ryot the right to cut down and appropriate trees planted by himself or his predecessors in estate. So much objection has been raised to this as inconsistent with the custom of many districts that it has been thought better to omit it, and leave the enjoyment of trees to be regulated by custom or contract as at present. The first clause of the section has been altered so to provide that no improvement made without the written consent of the landlord shall be a bar to any enhancement which the landlord might have been able to claim had no such attempt at improvement been made. So modified, the section seems open to no valid objection. It is highly important to provide specifically for the carrying out of improvements by occupancy ryots. Words have also been inserted declaring the right of an occupancy ryot to cultivate any crop he chooses The same right is allowed to the non-occupancy ryot unless debarred by specific contract with his landlord. The necessity of such provisions has been recently forced upon the attention of Government by the oppressive proceedings of certain landlords in Behar.

Number of section in the Commission's Bill.	Number of section in the Government Bill.	Remarks and Explanations.
78	70	Under this section a tenant was declared not liable to a transferee of the landlord's interest for rent paid to the former landlord when such tenant had received no notice of the transfer. Mr. Reynolds proposed to omit the section, but the Lieutenant-Governor prefers to retain it (it being in fact the law at present), making it clear, however, that the notice required is not an individual notice to each ryot, but a general notice in the villages transferred.
.....	71	This is the new section already referred to, forbidding sub-letting by an occupancy ryot without his landlord's written consent. The effect of this, and of the other proposals with reference to sub-letting, will have to be maturely considered when the Bill comes before Council.
79	72	This section regulates the determination of tenancies. The first clause that has been modified is (4). The Rent Commission proposed that in the case of a non-transferable holding, abandonment should not be assumed until the tenant had been absent from the neighbourhood for a year. This was somewhat hard upon landlords; and Mr. Reynolds proposed to omit the words 'for a year,' and specify no term. This has been rightly objected to as going too far in the other direction. The Lieutenant-Governor prefers to take cessation of cultivation, absence from the neighbourhood, and failure to pay any (quarterly) instalment of rent within 15 days of due date, as sufficient evidence of abandonment, giving the ryot the right to recover possession and damages within six months if he was wrongly ousted. In clause (18) three months has been substituted for six months, as the time within which the landlord must elect to treat disclaimer as a forfeiture of tenancy. It is also provided that the landlord must sue to eject.
80	73	No change. See Mr. Reynolds' memorandum, page 25.
		Chapter XI.—Of Special Provisions for Behar.
81 to 86	74 to 92	This chapter remains practically in the shape into which it was cast by Mr. Reynolds after consulting the most experienced officers in Behar, and meeting at Bankipore the leading official and non-official persons interested in the subject. The nature of the changes made in the Commission's draft is explained in Mr. Reynolds' memorandum, pages 26 to 29. The Lieutenant-Governor submits the chapter, giving it his support provisionally. Before it is passed into law, the sections will require to be carefully considered in the light of the further criticisms which may be expected. Meantime attention is invited to the reports by Behar officers to be found among the enclosures of this letter, and especially to a note by Mr. Edgar, lately officiating as Commissioner of the Patna Division, also to the notes by Mr. Reynolds in Appendix IV. That the state of things in Behar is such as to call for special remedies has been generally admitted of late years by all who have any acquaintance with the province, except of course the Behar landlords. The enquiries of the Famine Commission confirmed the views of the local officers, and the results of previous investigations, such as that made by Messrs. Geddes and MacDonnell. Even if no change were to be made in the substantive law of Bengal in respect of such matters as the occupancy right, and the practice of distraint, some legislation would certainly have to be undertaken on these subjects in the interests of the Behar tenantry. The Rent Commission were convinced that in Behar the proof of the right of occupancy should be made much more easy than in Bengal; and they did away with distraint altogether. If, however, the Lieutenant-Governor's proposals for placing the occupancy right upon a broad and popular basis throughout the whole of the Lower Provinces meet with approval, and if the improvements suggested by him in the law of distraints are accepted, the matters calling for exceptional treatment in connection with Behar are practically reduced to two, as in the Bill now submitted, *viz.*, the disposal of claims to *zerat* lands, and the regulation of the procedure for the realisation of rents in kind.
		Chapter XII.—Of Damages and Penalties.
87 to 19	93 to 97	The only changes made in this chapter are the assimilation of the rates of interest in sections 96 and 97, as proposed in Mr. Reynolds' memorandum, page 29, and the definition in section 94 of the penalty for withholding a statement of account.

Number of section in the Commission's Bill.	Number of section in the Government Bill	Remarks and Explanations.
		Chapter XIII.—Of Limitation.
92 to 94 and schedule.	98 to 100 and schedule.	See Mr. Reynolds' memorandum, page 29. The Lieutenant-Governor does not propose at present to provide any special limitation for recovery of arrears of rent in kind.
		Chapter XIV.—Of Distraint.
.....	101 to 127	The object of this chapter is explained at pages 30 and 31 of Mr. Reynold's memorandum, and in paragraph 15 of Part II of this letter. It has been generally approved by the officers consulted upon, and it stands, with a few verbal alterations, as Mr. Reynolds drafted it. The Lieutenant-Governor believes that the plan of distraint embodied in the chapter will work far more satisfactorily than that of the present law.
		Chapter XV.—Of Proceedings to enhance the Rent Payable in money by Ryots having a Right of Occupancy, or by Tenure-holders or Under-Tenure-holders.
95 to 132	128 to 146	Mr. Reynolds, at pages 31 to 35 of his memorandum, explains the reasons for departing from the elaborate alternative procedure for enhancement before the civil or revenue courts devised by the Rent Commission The subject is also discussed in paragraphs 26 to 30 of Part II of this letter. Section 142 of Mr. Reynolds' draft has been so altered as to make the table of rates conclusive evidence that the rates shown in it are the "fair and equitable rates" payable by the occupancy ryots of the tract affected within the meaning of clause (*d*) of section 21. Under section 143 the Lieutenant-Governor would prefer to see the table of rates maintained until a fresh table was published. The provision that a zemindar may go into court in ten years' time to enhance an individual ryot's rent, is opposed to the whole principle of the table, which aims at a revival of a general pergunna, or local rate. If it were found possible to give landlords powers of applying for a revised table—and the Lieutenant-Governor sees no good reason why this should not be allowed—it would be well to maintain the rates of the table in every case until formerly revised. This point might be considered when the Bill is before Council. A few minor modifications have been made in Mr. Reynolds' draft.
		Chapter XVI.—Of the Recovery of Arrears of Rent in certain cases by Summary Sale without Decree.
133 to 146	147 to 163	See Mr. Reynolds' memorandum, pages 35 to 38, and paragraph 16 of Part II of this letter. The details of this chapter can best be considered in Select Committee hereafter.
		Chapter XVII.—Of certain Special Rules of Procedure applicable to Suits between Landlords and their Tenants or Agents.
147 to 164	164 to 186	See Mr. Reynolds' memorandum, pages 38 and 39. In this and the following chapter the Lieutenant-Governor has thought it best to restore those sections of the Commission's Bill which set forth the sections of the Civil Procedure Code applicable at the various stages of a rent suit. In this way a better idea is obtained of the conduct of such a suit than by a general section introducing the whole of the Civil Procedure Code unless when specially barred. The most important modification is in section 168 which takes the place of section 11 of the Commission's Bill for the reasons explained above *in loco*.
		Chapter XVIII.—Of the Procedure in Suits for the Recovery of Arrears of Rent, &c., and certain other suits.
		See Mr. Reynolds' memorandum, pages 39 to 41, and paragraphs 13 and 14 of Part II of this letter. The Lieutenant-Governor believes that no more summary procedure for the trial of rent suits can safely be devised than the sort of Small Cause Court procedure elaborated in this chapter. The only change introduced in Mr. Reynolds' draft (besides that noticed under Chapter XVII above) is in section 225 (c) where the Lieutenant-Governor is empowered, in any district or part of a district, to direct that occupancy holdings may be sold as tenures—that is to say, without a necessary voiding of all incumbrances. This is to meet the case of those under-tenants of large occupancy ryots already referred to in the remarks above on section 11 of the Commission's Bill.

LIST OF APPENDICES AND SCHEDULES.

APPENDIX I.—Memorandum on the history of the rent-question in Bengal since the passing of Act X of 1859.

APPENDIX II.—(A.) Extracts from Phillips' Lectures on the Land Tenures of Lower Bengal

(B) Extract from Report of Indian Famine Commission.

APPENDIX III.—(1) Letter to Government of Bengal from Board of Revenue, Lower Provinces, No. 357½A, of the 3rd June 1881, on the difficulties attendant on the enhancement of rents in land settlements in Bengal.

(2) Letter of the Government of Bengal to the Government of India, No. 710T, dated 11th July, submitting the foregoing.

APPENDIX IV.—(1) Memorandum on the Rent Bill. By Mr. H. J. Reynolds (on special duty).

(2) Draft Bill prepared by Mr Reynolds.

(3) Notes by Mr. Reynolds—

(*a*) On enhancement in Behar.

(*b*) On occupancy rights in Behar.

(*c*) On commutation of *bhaoli* rents.

(*d*) On the occupancy right.

APPENDIX V.—Correspondence with the High Court regarding the establishment of Special Rent Courts.

SCHEDULE I.—Reports and memorials on Rent Commission's Bill and Report.

SCHEDULE II.—Reports and memorials on Mr. Reynolds' Draft Bill and Memorandum.

["The Italic figures on the margin indicate the corresponding sections of the Rent Commission's Draft Bill."]

A Bill to consolidate and Amend the Law of Landlord and Tenant within the Territories under the Administration of the Lieutenant-Governor of Bengal.

[As settled by the Government of Bengal.]

Whereas it is expedient to consolidate and amend the Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal: It is hereby enacted as follows:—

Preliminary.

1 **1.** This Act may be called "The Bengal Landlord and Tenant Act, 188 ."

Short title.

It extends to all the territories for the time being under the administration of the Lieutenant-Governor of Bengal, except the Town of Calcutta, the Division of Orissa, and the Scheduled Districts specified in the third part of the First Schedule of "The Scheduled Districts Act, 1874." It shall be lawful for the said Lieutenant-Governor to extend the whole or any part of this Act to the Division of Orissa by a notification published in the *Calcutta Gazette*; and from the date of the publication of the said notification this Act or such part as may be specified in such notification shall have operation in the said Division.

Local extent.

Commencement. It shall come into force on the day of 188 .

2 **2.** The enactments specified in the First Schedule hereto annexed are hereby repealed from and after the commencement of this Act. When this Act or any part of it is extended to the Division of Orissa, such of the said enactments as are in force in that Division, or, where a part only is extended, so much of them as is inconsistent with such part, shall cease to have operation in the said Division:—

Repeal.

Provided that—

(1) any enactment or document referring to any Act or enactment hereby repealed shall be construed to refer to this Act or to the corresponding portion thereof;

(2) this repeal shall not affect—

(*a*) the past operation of any enactment hereby repealed, nor anything duly done or suffered thereunder; nor

(*b*) any right, privilege, obligation, or liability acquired, accrued or incurred under any enactment hereby repealed; nor

(*c*) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, or liability as aforesaid; and any such investigation, legal proceeding and remedy may be carried on as if this Act had not passed; and

(3) this repeal shall not revive any enactment, right, privilege, matter or thing not in force or existing at the commencement of this Act.

3. In this Act the following words and expressions are used in the following senses, unless a different intention appears from the context:— *3*

Definitions of terms.

"Estate" means land included under one entry in any of the General Registers of Revenue-paying Lands and Revenue-free Lands, prepared and maintained under the law for the time being in force by the Collector of a District:

Estate

"Proprietor" means a person who as owner is solely or jointly in possession of an estate or a share of, or interest in, an estate:

Proprietor.

"Tenure" means (1) a rent-paying interest in land immediately subordinate to that of a proprietor and superior to that of a ryot; (2) a revenue-free or rent-free interest in land, when there exists no rent-paying interest in the same land between the proprietary interest and such revenue-free or rent-free interest:

Tenure.

Illustrations.

(*a*)—A *patni* interest is a tenure.

(*b*)—An *ijarah* or farm for a term of years is a tenure.

(*c*)—A holds 120 bighas of valid revenue free land situate within the limits of B's revenue-paying estate and not included under any entry in the General Register of Revenue-free Lands maintained by the Collector of the District under the law for the time being in force. This land is in the actual possession of ryots who pay their rents to A. The interest of A in such land is a tenure.

(*d*)—B, the proprietor of a revenue-paying estate, makes a rent-free grant to A of 50 bighas of land included in such estate and in the actual possession of ryots. A, by virtue of such grant, becomes entitled to the rents payable by these ryots. A's interest in these 50 bighas is a tenure.

"Tenure-holder" means a person who as owner is solely or jointly in possession of a tenure or a share of, or interest in, a tenure:

Tenure-holder.

"Undertenure" means (1) a rent-paying interest in land subordinate to that of a tenure-holder and superior to that of a ryot; (2) a rent-free interest in land, when there exists a rent-paying interest in the same land between the proprietary interest and such rent-free interest:

Undertenure.

Where there are more undertenures than one in the same land, the undertenure immediately subordinate to that of the tenure-holder is termed an "undertenure of the first degree;" the undertenure immediately subordinate to the undertenure last mentioned is termed an "undertenure of the second degree;" the

Undertenure of the first degree.

Undertenure of the second degree.

undertenure immediately subordinate to that last mentioned is termed an "undertenure of the third degree;" and so on in order.

Undertenure of the third degree.

Illustrations.

(*a*)—A *dar-patni* interest is an undertenure of the first degree.

(*b*)—A *se patni* interest is an undertenure of the second degree

(*c*)—A *dar-ijarah* is an undertenure.

(*d*)—B holds a *patni* tenure of 2,000 bighas of land under C, the proprietor of the Gopalpur estate. B makes a rent-free grant to A of 80 out of the 2,000 bighas. These 80 bighas are in the actual possession of ryots, who after the grant pay their rents to A. The interest of A is an undertenure.

"Undertenure-holder" means a person who as owner is solely or jointly in possession of an undertenure, or a share of, or interest in, an undertenure:

Undertenure-holder.

"Ryot" means a person who holds land, or who occupies and cultivates land, if such person or his predecessor in title was originally let into possession of such land by a proprietor, tenure-holder, or undertenure-holder, for the purpose of cultivating it or bringing it under cultivation. A person cultivates land or brings land under cultivation within the meaning of this definition, when the cultivation is carried on by himself, or by the members of his family, or by servants, or by hired labourers, or by persons to whom he has sublet the land or any part of it, or partly by some and partly by others of these persons: and 'cultivation' includes the holding of grass or fallow lands for the customary uses of such lands.

Ryot.

"Holding" means the interest of a ryot in the land which he holds or occupies and cultivates, and which forms the subject of a separate tenancy:

Holding.

"Occupancy holding" means a holding in which a ryot or any such tenant as is mentioned in section 32 has a right of occupancy:

Occupancy holding.

"Under-ryot" means a person to whom a ryot has sublet his holding or a portion thereof:

Under-ryot.

"Rent" means whatever is payable or deliverable by a tenure-holder, undertenure-holder, or occupancy ryot to the proprietor, tenure-holder, or undertenure-holder possessing the interest immediately superior in the land held by him, in recognition and satisfaction of such superior interest; or whatever is payable or deliverable as a return or compensation for the use or occupation of land, or for any rights of pasturage, forest rights, fisheries, or the like:

Rent.

"Land" includes woods and water thereupon: when applied to land cultivated or held by a ryot, it means land used, or intended to be used, for agricultural or horticultural purposes, or the like. In Chapter XVIII it means (*a*) tenures, undertenures and holdings; (*b*) land used, or let to be used, for agriculture, horticulture, pasture, or other similar purpose; or for dwelling houses, manufactures, or other similar buildings; and (*c*) rights of pasturage, forest rights, fisheries, and the like.

Land.

Explanation.—Bastu or homestead land is land used for agricultural purposes when it is occupied by a ryot, and together with the land cultivated by such ryot forms a single holding:

"*Khamar, nij-jote,* or *seer* lands, means land which a proprietor, tenure-holder, or undertenure-holder, has held as his private land for twelve continuous years before the commencement of this Act.

Khamar, nij-jote, or seer land.

"*Ryotee* lands" means all the lands in an estate, tenure, or undertenure which are not *khamar, nij-jote* or *seer* land.

Ryotee lands.

"Tenant" means a person liable to pay or deliver rent:

Tenant.

"Landlord" means a person to whom a tenant is liable to pay or deliver rent:

Landlord.

"Lease" or "Potta" means a written instrument creating or declaring the relation of landlord and tenant, and executed by the landlord in favour of the tenant:

Lease. Potta.

"Kabuliyat" means a written instrument creating or declaring the relation of landlord and tenant, and executed by the tenant in favour of the landlord, and includes the counterpart of a lease or potta:

Kabuliyat.

In Chapter XI "Behar" means all the districts of the Patna Division, and those districts, or parts of districts, of the Bhagulpore Division, to which the Lieutenant-Governor of Bengal, by a notification published in the *Calcutta Gazette*, shall extend the provisions, or any part of the provisions, of the said Chapter.

Behar.

"Collectorate" means the district to which a Collector is appointed, and does not include lands situate beyond the local limits of such district, but forming part of an estate of which the revenue is paid into the treasury of the said district:

Collectorate.

"Signed" includes "marked" when the person making the mark is unable to write his name; it also includes "stamped" with the name of the person referred to:

Signed.

"Judge" means the presiding officer of a court:

Judge.

"Chapter" or "section" mean a chapter or section of this Act.

Chapter. Section.

4. Nothing in this Act is intended to affect— 4

(*a*) any custom or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions;

Saving of custom, &c.

(*b*) the powers and duties of settlement officers as by law defined and limited;

(*c*) the provisions of any special or local law not hereby repealed either expressly or by necessary implication.

Illustration.

The custom of a ryot sub-letting his land for a term, or from year to year, is not inconsistent with, and is not expressly, or by necessary implication modified or

abolished by, the provisions of this Act. It is not intended that such custom should be affected by this Act.

5 Division of Act into Chapters. 5. This Act is divided into Chapters, as follows:—

Chapter I.—Of Tenure holders and Undertenure-holders.
Chapter II.—Of Ryots entitled to hold land at fixed Rates.
Chapter III.—Of Ryots who possess a Right of Occupancy.
Chapter IV.—Of Ryots who do not possess a Right of Occupancy.
Chapter V.—Of the use of Land for Building Purposes.
Chapter VI.—Of Merger.
Chapter VII.—Of the Registration of Transfers of Tenures, Undertenures, and Occupancy-holdings.
Chapter VIII.—Of Rent, Instalments of Rent, Receipts for Rent, Deposit of Rent, Apportionment of Rent, and Hypothecation for Rent.
Chapter IX.—Of Coparceners.
Chapter X.—Of some Miscellaneous Rights of Landlords and Tenants.
Chapter XI.—Of Special Provisions for Behar.
Chapter XII.—Of Damages and Penalties.
Chapter XIII.—Of Limitation.
Chapter XIV.—Of Distraint.
Chapter XV.—Of Proceedings to enhance the Rent payable in money by Ryots having a right of Occupancy, and by Tenure-holders and Undertenure-holders.
Chapter XVI.—Of the recovery of Arrears of Rent in certain cases by Summary Sale without Decree.
Chapter XVII.—Of certain Special Rules of Procedure applicable to suits between Landlords and their Tenants or Agents.
Chapter XVIII.—Of the Procedure in Suits for the recovery of Arrears of Rent, and certain other Suits.

Chapter I.—Of Tenure-holders and Undertenure-holders.

6 Tenure or undertenure held at fixed rent since Permanent Settlement not liable to enhancement.

6. (*a*) No tenure-holder or undertenure-holder, who otherwise than under a terminable lease holds his tenure or undertenure at a fixed rent which has not been changed from the time of the Permanent Settlement of Bengal, Behar, and Orissa, made in the year of the Christian era one thousand seven hundred and ninety-three, shall be liable to any enhancement of such rent.

Presumption from twenty years' holding at unchanged rent.

(*b*) Whenever it shall be proved in any suit under this Act that the rate of rent, at which any such tenure or undertenure is held, has not been changed for a period of twenty years before the commencement of such suit, it shall be presumed that such tenure or undertenure has been held at that rent from the time of such Permanent Settlement, unless the contrary be shown, or unless it be proved that such tenure or undertenure was created, or such rent fixed at some later period.

Explanation.—Such presumption may be made even though the tenure-holder or undertenure-holder do not plead in express terms that the tenure or undertenure has been held from the time of the Permanent Settlement at a rent which has not changed since that time, provided that there be nothing in his statements inconsistent with its having been so held.

Exception.—In the case of a tenure or undertenure situate in an estate not permanently settled, such presumption shall not operate to prevent the enhancement of the rent of such tenure or undertenure upon the expiry of a temporary settlement of the revenue, unless the right to hold such tenure or undertenure for ever at a fixed rate of rent has been expressly recognized in Settlement Proceedings by a Revenue authority empowered by Government to make definitively or confirm settlements.

7 Tenure or undertenure held since Permanent Settlement liable to enhancement only in certain cases.

7. No tenure or undertenure which has been held since the time of such Permanent Settlement is liable to enhancement except upon proof (1) that the landlord under whom it is held is entitled to enhance the rent thereof either (*a*) by the special custom of the district, or (*b*) by the conditions under which the tenure or undertenure is held; or (2) that the tenure-holder or undertenure-holder by receiving abatements from his rent has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it.

Explanation I.—In order to entitle a tenure-holder or undertenure-holder to the benefit of this Section, it is sufficient for him to show that his tenure or undertenure existed and could have been registered in the Collector's office at the time of the Permanent Settlement, even though it were not actually registered.

Explanation II.—An abatement of rent granted to a tenure-holder or undertenure-holder for land taken under the provisions of the "Land Acquisition Act, 1870," is not an abatement within the meaning of this Section.

8 Tenure-holder or undertenure holder liable to enhancement for land gained by alluvion and entitled to abatement for land lost by diluvion.

8. (*a*) Notwithstanding anything contained in Section 6 or in Section 7, every tenure-holder and undertenure-holder shall, in the absence of an express contract to the contrary, be liable to pay additional rent for all land added to his tenure or undertenure by alluvion, unless he can show that such land has reformed on the site of land formerly included in his tenure or undertenure, and for the loss of which he has had no abatement of rent; and shall be entitled to abatement of rent in respect of any diminution of the area of his tenure or undertenure caused by diluvion or otherwise.

(*b*) Such increase of rent shall be calculated on the rates payable by ryots having rights of occupancy for lands of a similar description and with similar advantages in the vicinity, less a deduction of 20 per cent. for risk and cost of collection.

(*c*) 1. Such abatement of rent shall bear the same proportion to the rent previously paid as the diminution of the total assets bears to the previous total assets of the tenure or undertenure; or

2. In default of satisfactory proof of the value of the assets of the lands lost, such abatement of rent shall bear to the rents previously paid the same proportion as the diminution of area bears to the previous area of the tenure or undertenure.

9 **9.** In any case in which the rate of rent of a tenure-holder or undertenure-holder is liable to enhancement, such rate may be enhanced up to the limit of the customary rate payable by persons holding similar tenures or undertenures in the vicinity; or, where no such customary rate exists, up to such limit as to the Court shall appear fair and equitable; provided that in cases where no customary rate exists and in the absence of any specific contract to the contrary, the profit of such tenure-holder or undertenure-holder shall not exceed thirty per centum of the balance which remains after deducting from the gross rents payable to him the expenses of collecting such rents. If such tenure-holder himself occupies any portion of the land included in his tenure or undertenure, or has made a rent-free grant of any portion of such land, a reasonable rent shall be calculated for such portions and included in the gross rents aforesaid.

Limits of enhancement of rent of tenures and undertenures

12 **10.** If more than half the land included in any tenure or undertenure was unreclaimed at the time when the tenure or undertenure was created, and if the reclamation of such unreclaimed land were one of the objects of the creation of the tenure or undertenure, and such unreclaimed land were reclaimed accordingly, the rent of such tenure-holder or undertenure-holder, notwithstanding anything contained in Section 9, shall not be enhanced, so as to reduce his profit below twenty per centum of the balance mentioned in, and calculated according to the provisions of, Section 9: and the Court may, in any case in which such rent is enhanced, allow to any such tenure-holder or undertenure-holder by way of profit any such share of the said balance exceeding twenty per centum thereof, as to such Court may appear fair and equitable.

Limit of enhancement of rent of tenure-holder or undertenure-holder if more than half the land was unreclaimed at the time of the creation of the tenure or undertenure.

10 **11.** (*a*) In any case in which the rent of a tenure-holder or undertenure-holder is found to be liable to enhancement, the enhanced rent shall not be more than double the rent previously payable, unless the enhancement is under Section 8.

Enhanced rent not to be more than double the previous rent.

(*b*) The Court may, on the ground of hardship direct that the enhancement shall be gradual—that is to say, that the rent shall increase yearly by degrees for any number of years not exceeding five, until the limit of the enhancement allowed has been reached.

Enhancement may be gradual.

(*c*) When the rent of a tenure-holder or undertenure-holder, has been enhanced by a Civil Court under the provisions of this Act, such rent shall not be liable to alteration for a period of ten years next ensuing after the date on which such enhancement took effect.

Rent once enhanced may not be altered for ten years.

Explanation.—An increase of rent on account of land gained by alluvion or a decrease of rent on account of land lost by diluvion is not an alteration within the meaning of Clause (*c*) of this Section.

13 **12.** All permanent tenures and undertenures are declared to be heritable, devisable, capable of being transferred by sale, gift, or otherwise at the discretion of the holder, answerable for his personal debts, and subject to the process of the Civil Courts, as other immovable property.

Permanent tenures and undertenures declared heritable, devisable, and transferable.

14 **13.** (*a*) A *patni* taluk is a tenure held at a rent fixed in perpetuity, heritable, devisable, capable of being transferred by sale, gift, or otherwise at the descretion of the holder, answerable for his personal debts, and subject to the process of the Civil Courts in the same manner as other immovable property.

Legal incidents of a *patni* taluk.

(*b*) A patni tenure is not liable to be cancelled for default in payment of the rent thereof, but such tenure may be brought to sale by public auction, and the defaulting patnidar or holder of such patni tenure is entitled, subject to the provisions of this Act, to any surplus proceeds of sale beyond the arrears of rent due upon such tenure.

(*c*) A patnidar is entitled to let out the lands composing his tenure in any manner most conducive to his interest, and any engagements entered into by such patnidar with others are legal and binding between the parties to the same, their heirs and assignees: provided, however, that no such engagement shall operate so as to prejudice the right of the proprietor to hold the patni tenure answerable for any arrear of his rent in the state in which he granted it, and free of all incumbrances resulting from the act of his tenant, the patnidar.

Right to sublet.

Explanation.—In any case in which the interest in land created by a lease is therein denominated a patni taluk or patni tenure, it shall be presumed that a tenure having the incidents specified in this Section is intended.

15 **14.** The provisions of Section 13 shall apply, *mutatis mutandis*, to the following undertenures, namely, a *patni taluk* of the second degree, which is termed a "darpatni;" a *patni taluk* of the third degree, which is termed a "sepatni," and a *patni taluk* of the fourth degree, which is termed a "chahar-patni."

Provisions of Section 13 applicable, *mutatis mutandis*, to *patni* undertenures.

Chapter II.—Of Ryots entitled to hold Land at Fixed Rates.

15. Ryots who hold lands at fixed rates of rent which have not been changed from the time of the Permanent Settlement of Bengal, Behar, and Orissa, made in the year of the Christian era one thousand seven hundred and

Ryots holding land at rates not changed since Permanent Settlement to continue to hold at these rates.

ninety-three, are entitled to continue to hold their lands at those rates.

Explanation I.—In the case of rent payable in kind, a fixed proportion of the produce is a fixed rate within the meaning of this Section.

Explanation II.—The operation of this Section is not affected by the fact of the land having been demised to different persons, or transferred, or separated from other land which formed with it a single holding, or amalgamated with other land into one holding, if the rate of rent has not been altered thereby.

17 **16.** Whenever it shall be proved in any suit or proceeding that the rent at which land is held by a ryot has not been changed for a period of twenty years before the commencement of such suit, it shall be presumed that the land has been held at that rent from the time of such Permanent Settlement, unless the contrary be shown, or unless it be proved that such rent was fixed at some later period.

Presumption if rent of land has not been changed for 20 years before suit.

Explanation.—Such presumption may be made even though the ryot do not plead in express terms that the land has been held from the time of the Permanent Settlement at a rent which has not been changed since that time, provided that there be nothing in his statements inconsistent with its having been so held.

Exception.—In the case of a ryot holding land in an estate not permanently settled, such presumption shall not operate to prevent the enhancement of the rent of such land upon the expiry of a temporary settlement of the revenue, unless the right to hold such land for ever at a fixed rate of rent has been expressly recognized in Settlement Proceedings by a Revenue authority empowered by Government to make definitively or to confirm settlements.

17. The following legal incidents shall attach to every holding held at a fixed rate of rent within the meaning of this Chapter:

Legal incidents of a holding at fixed rates.

(*a*) It shall be saleable as a tenure under the provisions of this Act for arrears of the rent thereof, and shall be answerable for the personal debts of the holder, and subject to the process of the Civil Courts, as other immovable property.

(*b*) It shall be heritable according to the law of inheritance to which the holder is subject, and shall be devisable by will, and transferable by private sale, gift, or otherwise at the pleasure of the holder. Provided that no division of the holding or of the rent shall be made so as to be binding on the landlord without his written consent.

(*c*) A ryot may not be ejected from a holding held at a fixed rate of rent.

18 **18.** (*a*) A ryot entitled to hold land at fixed rates shall be liable to pay additional rent for all land added to his holding by alluvion, unless he can show that such land has reformed on the site of land formerly included in his holding, and for the loss of which he has had no abatement of rent; and shall be entitled to abatement of rent in respect of any diminution of the area of his holding caused by diluvion or otherwise.

Ryot holding at fixed rates liable to pay additional rent for land gained by alluvion, and entitled to abatement for land diluviated.

(*b*) Such increase shall be calculated at the prevailing rate payable by ryots having rights of occupancy for land of a similar description and with similar advantages in the vicinity.

(*c*) 1. Such abatement of rent shall bear the same proportion to the rent previously paid as the diminution of the total annual value bears to the previous total annual value of the holding; or,

2. In default of satisfactory proof of the annual value of the land lost, such abatement of rent shall bear to the rent previously paid the same proportion as the diminution of area bears to the previous area of the holding.

Chapter III.—Of Ryots who possess a Right of Occupancy.

19 **19.** (1) Any ryot who for a continuous period twelve years before the commencement of this Act has as a tenant held, or has as a tenant occupied and cultivated land, and paid rent for the same, has a right of occupancy in the land so held or occupied and cultivated by him, whether held or occupied under a lease or otherwise.

Rights of occupancy, by whom held
(1) By ryots who acquired such before the commencement of this Act

(2) Every resident ryot has a right of occupancy in any land which he as a tenant holds, or as a tenant occupies and cultivates, paying rent for the same, whether such land be held or occupied under a lease or otherwise.

(2) By Resident ryots.

(3) Any ryot, not being a resident ryot, to whom any such ryot as is described in clauses (1) and (2) of this section may, after the commencement of this Act, transfer or devise his holding, or who may purchase such a holding at any sale in execution of a decree, has a right of occupancy in the land so transferred, devised, or sold, provided the landlord, within whose estate, tenure, or undertenure the land lies, give his consent in writing to the continuance of such right of occupancy, and not otherwise.

(3) By transferee of occupancy ryot.

Explanation I.—A 'resident ryot' is a ryot who has his fixed habitation in the village within which he holds or cultivates land as a tenant; or who has held and paid rent for the lands in respect of which a right of occupancy is claimed by him for three successive years or more, provided that such lands lie within a distance of not more than two miles of his fixed habitation.

A ryot acquires a 'fixed habitation' by residing within the same village for three years or more.

Explanation II.—For the purposes of this section any number of villages which are included in the village maps of the Revenue Survey of Bengal within one and the same exterior boundary, shall be deemed to be one village.

Explanation III.—A right of occupancy may be acquired or held—

(*a*) by a person holding or occupying land immediately under, and paying rent directly to, a mukarraridar or istemraidar;

(*b*) by a person holding or occupying *khamar*, *nij-jote*, or *seer* land immediately under, and paying rent directly to, a proprietor, if such land is held or occupied otherwise than for a term, or year by year.

Explanation IV.—A right of occupancy may not be acquired or held—

(*a*) by a proprietor in land which is a portion of his estate;

(*b*) by any such tenure-holder or under-tenure-holder as is mentioned in Chapter I, in land which is a portion of his tenure or under-tenure;

(*c*) by a mukarraridar or instemrardar in land in which he has a mukarrari or istemrari interest;

(*d*) by an ijarahdar or farmer of rents, in land which is a portion of his ijarah;

provided that a right of occupancy otherwise duly acquired in land shall not be lost by subsequently holding such land as part of an ijarah or farm;

(*e*) by a person holding or occupying land immediately under, and paying rent directly to, a ryot having a right of occupancy therein;

provided that nothing shall interfere with the enjoyment of any customary rights possessed by the under-ryots of a ryot having a right of occupancy, where the holding of the latter is more than 100 standard bighas in area;

(*f*) by a person holding or occupying *khamar*, *nij-jote*, or *seer* land immediately under, and paying rent directly to, a proprietor, if such land is held for a term, or year by year;

provided that nothing in this Act shall be construed to warrant the conversion by any proprietor, tenure-holder, or undertenure-holder, or *ryotee* land into *khamar*, *nij-jote*, or *seer* land, in such manner as to bar or set aside any right of occupancy which a resident ryot may hold or acquire in such *ryottee* land; and nothing in this Act shall interfere with any right of occupancy which any ryot may hold or acquire in any *khamar*, *nij-jote* or *seer* land under the provisions of this Act, or of any Act repealed by this Act. All the lands in a village shall be presumed to be *ryotee* lands until the contrary is shown.

Acquisition of right of occupancy cannot be barred by contract. Exceptions.

20. No contract, whether entered into before or after the commencement of this Act, shall in any case debar a ryot from acquiring a right of occupancy in ryotee lands, except under the provisions of section 32.

Legal incidents of a right of occupancy

21. The following legal incidents shall appertain to every holding in which a right of occupancy has been acquired under this Act, or any Act repealed thereby; that is to say—

Saleable in execution of decree.

(*a*) Subject to the provisions of clause (3) of section 19, it shall be saleable in execution of decree.

Transferable by sale or gift, and devisable.

(*b*) It may be transferred by private sale or gift, and may be devised by will, and the consent of the landlord shall not be necessary to the validity of any such transfer or devise; provided that no transfer or devise of a portion only of such holding shall be valid as against the landlord without his written consent. A transfer under this clause is not complete until possession has been obtained by the transferee.

Heritable according to the law of inheritance of the tenant.

(*c*) It shall be heritable according to the law of inheritance to which the tenant is subject, but no division of the holding or of the rent shall be made so as to be binding on the landlord without his written consent. If a ryot who has a right of occupancy in land dies, leaving no heirs and without having made a will, the landlord shall be entitled to take possession of such land.

Ryot entitled to hold at fair and equitable rate

(*d*) A ryot having a right of occupancy, but not holding at a fixed rate of rent, is entitled to hold at fair and equitable rates. In case of dispute, the rates previously paid by the ryot shall be deemed to be fair and equitable unless the contrary be shown in a suit by either party under the provisions of this Act.

Ryot may not be ejected from land in which he has such right.

(*e*) No ryot may be ejected from land in which he has a right of occupancy, whether for non-payment of rent or other cause not being a breach of a stipulation in respect of which such ryot and his landlord have contracted in writing that the ryot shall be liable to ejectment for a breach thereof. No such ryot shall, however, be ejected for a breach of any such stipulation until the landlord has proved to the satisfaction of the Court that the injury sustained by the breach is such as to justify the ejectment of the tenant, and cannot justly be made the ground of compensation to be paid to the landlord.

Rent of occupancy ryot payable in kind not to exceed fifty per cent of the gross produce in the case of staple crops. In the case of other crops, a special contract in writing may be made and enforced; if no such contract, value of twenty-five per cent of staple crops may be recovered.

22. When the rent payable by ryot for an occupancy holding is paid in kind, or by paying the equivalent value of a certain proportion of the actual gross produce, and such ryot does not receive from his landlord seed or labour or other assistance in producing the crop, such rent shall not exceed fifty per centum of the gross produce in the case of any such staple crop as is mentioned in clause (*c*) of section 24. In the case of crops other than such staple crops, if the landlord and tenant have contracted in writing that a certain share of the gross produce shall be paid to the landlord as rent, such contract may be enforced; but, in the absence of any such contract, the landlord shall not be entitled to recover any other or greater rent than twenty-five per centum of the average annual value of the gross produce calculated as provided in clause (*c*) of section 24.

22 23. Subject to the other provisions of this Act, a landlord is entitled to enhance the rent payable to him in money by a ryot for land in which such ryot has a right of occupancy. Such rent may be enhanced upon any one or more of the following grounds, and not otherwise :—

Rent of ryot having a right of occupancy may be enhanced on what grounds.

(1) on the ground that the rate of rent paid by such ryot is below the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages in the vicinity ;

(2) on the ground that the quantity of land held by such ryot has been shown by measurement to be greater than the quantity for which rent has been previously paid by him ;

(3) on the ground that the productive powers of the land held by such ryot as compared with such powers at the time when the rent was fixed, or at any subsequent time which it may appear equitable to take for purposes of comparison, have increased otherwise than by the agency or at the expense of the ryot, and from causes not merely temporary or casual ;

(4) on the ground that the prices of produce in the locality, or at the usual markets, as compared with similar prices at the time when the rent was fixed or at any subsequent time which it may appear equitable to take for purposes of comparison, have increased otherwise than by the agency or at the expense of the ryot, and from causes not merely temporary or casual.

Illustrations.

Of Ground (1).

(*a*)—A.'s paternal grandfather seventy years ago reclaimed and rendered culturable the land which A. now holds and cultivates, and which came to him by inheritance from such paternal grandfather. B. is a settled ryot who holds and cultivates land which was in a culturable state when B. was first let into possession thereof. A. and B. have each therefore a right of occupancy. There is evidence that the hereditary descendant of a ryot, who being the first settler reclaimed the land, has a special privilege. A. and B. are not ryots of the same class.

(*b*)—A. is in possession of a holding which has descended to him from his great-grandfather who held it at the time of the Permanent Settlement. B. was let into possession of his holding twenty years ago. There is evidence that the descendants of ryots, who were in possession at the time of the Permanent Settlement, customarily hold at rates less by four annas in the rupee than ryots who have come into possession at a later period. A and B. are not ryots of the same class.

Of Ground (2).

(*a*)—A., a ryot, holds his land at one rupee per bigha and has been paying an annual rent of Rs. 17 as for 17 bighas. A measurement shows that he holds 23 bighas, and the whole of this land is of the same quality. His rent can be enhanced to Rs 23.

(*b*)—A., a ryot, has a holding usually described in the jama-wasil-baki papers and the ryot's receipts as comprising 27 bighas, and the rent paid for which is Rs. 33-12. No measurement of this holding has at any time been made, and there is no allegation that its area has been diminished by diluvion ; but 15 bighas of land clearly distinguishable are shown by measurement to have been added to the holding by alluvion. This accreted land is of a better quality than any portion of the original holding, and it is shown that two rupees per bigha is the prevailing rate paid by ryots of the same class with A. for land of a similar description and with similar advantages in the vicinity. A. is liable to pay Rs. 30 in addition to his former rent of Rs 33-12.

(*c*)—A. was let into possession of a holding in 1860 under a written lease, which describes the holding as comprising 37 bighas of land and gives the boundaries The land is situated in a cultivated village, and the boundaries are ascertainable and definite. In 1880 the land within these boundaries is measured and found to be 45 bighas. A. is not liable to pay enhanced rent in respect of the 8 additional bighas found to be within the boundaries stated in his lease.

(*d*)—A. was let into possession of a holding in 1850 under a written lease, which describes the holding as comprising 50 bighas, more or less, and gives the boundaries. The land is situate in a village which in 1850 consisted chiefly of uncleared jangal, and the boundaries are inexact and indefinite. In 1880 A. is found to be in possession of 200 bighas of cultivated land, to which the description by boundaries is applicable. A is liable to enhancement.

(*e*)—A. held and cultivated 30 bighas of land at one rupee per bigha from 1863 to 1875. The land so regularly cultivated by him up to 1875 was then bounded on the east by uncleared waste land belonging to A.'s landlord. In 1876 A. began to encroach upon this waste land, and in 1880 is found to be, without the acquiescence of his landlord, in possession of 20 bighas of this waste land in addition to the 30 bighas originally held and cultivated by him. A.'s landlord may either treat A. as a trespasser in respect of these 20 bighas, and sue to eject him therefrom, and to recover from him means profits in respect thereof ; or may accept A. as his tenant for the 20 bighas as an addition to A.'s original holding of 30 bighas. In the latter case A. shall be liable to pay additional or enhanced rent for the 20 bighas of land.

Meaning of term "landlord."

Explanation I.—No person is a "landlord" within the meaning of this section who has not—

(*a*) a permanent transferable interest, or an interest not less than a life interest in the land of which the rent is payable to him : or

(*b*) a farming or leasehold interest in the land of which the rent is payable to him.

Meaning of term "land."

Explanation II.—The term "land" in this section means land used or intended to be used for agriculture, hort culture, pasture, or other similar purpose. When a landlord proceeds upon the fourth ground to enhance the rent of land used or intended to be used for pasture, such rent may be so fixed that the enhanced rate shall bear to the rate then prevailing for arable land in the vicinity the same proportion which the former rate bore to the similar rate prevailing at the time when such former rent was fixed, or at any subsequent time which it may appear equitable to take for purposes of comparison.

24. All enhancements of the rent of a ryot having a right of occupancy shall be subject to the following provisions and limitations :— 23

Landlord entitled to whole increment when effected solely by his agency or at his expense, otherwise to half only.

(*a*) In any case in which the rent of an occupancy holding is enhanced upon the third or fourth ground specified in section 23, if the increase of the productive powers of the land or of the price of produce has been wholly effected by the agency or at the expense of the landlord, such landlord shall be entitled to the whole of the benefit of such increase. If such increase has taken place otherwise than by the agency or at the expense of the landlord or the ryot, such landlord shall be entitled to one-half of such benefit only.

(*b*) In any case in which the rent of an occupancy holding is enhanced upon the third or fourth ground specified in section 23, the enhanced rent shall not be more than double the rent previously paid; and shall not bear a higher proportion to such rent previously paid than the increased productive powers or increased prices bear respectively to the former productive powers or the former prices. In estimating the increased productive powers or the increased prices, the Court or the Collector shall have regard to such an average of years as under the circumstances may appear reasonable.

Limit to enhancement upon the third or fourth ground.

Calculation to be based upon a reasonable average of years.

(*c*) In any case in which the rent of a ryot having a right of occupancy is enhanced upon the first, third, or fourth ground specified in section 23, the enhanced rent shall not be more than one-fourth of the average annual value of the gross produce of the land for which such rent is payable. Such average annual value shall be calculated for staple crops only, and upon the prices at harvest time of a reasonable number of years. The Board of Revenue may from time to time make, and, when made, alter, add to, and revoke rules for calculating such average annual value, and shall also determine, and notify by an advertisement in the *Calcutta Gazette*, what crops shall be deemed to be staple crops, for the purposes of such calculation, in any district or in any area less than a district to be described in such notification. When such staple crops have been so determined and notified for any such district or area, one year's previous notice shall be given of any alterations in such staples.

Rent enhanced on first, third, or fourth ground not to exceed one fourth of the average annual value of gross produce, calculated for staple crops

Board of Revenue to make rules for calculating average value and to determine and notify staples.

(*d*) In any case in which the rent of an occupancy holding is enhanced, if it be shown that the payment of the enhanced rent would be attended with hardship, the Court may direct that such enhancement shall be gradual,—that is to say, that the rent shall increase yearly by degrees for any number of years not exceeding five until the limit of the enhancement allowed has been reached.

Progressive enhancement may be directed.

24 (*e*). The rent of a ryot having a right of occupancy shall not be liable to enhancement (1) when he holds under a written lease for a term certain, which has not expired; (2) when such ryot and his landlord have contracted that such rent shall not be enhanced.

No enhancement in certain cases of the rent of a ryot having a right of occupancy.

25 25. A ryot having a right of occupancy is entitled, on any one or more of the following grounds and not otherwise, to an abatement of the rent payable by him in money, namely:—

Ryot having right of occupancy when entitled to abatement of rent.

(1) on the ground that the quantity of land held by such ryot has been shown by measurement to be less than the quantity for which rent has been previously paid by him;

(2) on the ground that the productive powers of the land held by such ryot as compared with such powers at the time when the rent was fixed, or at any subsequent time which it may appear equitable to take for purposes of comparison, have decreased from some cause beyond the ryot's control, and not merely temporary or casual;

(3) on the ground that the prices of produce in the locality or at the usual markets, as compared with similar prices at the time when the rent was fixed, or at any subsequent time which it may appear equitable to take for purposes of comparison, have decreased from some cause beyond the ryot's control, and not merely temporary or casual.

The provisions of section 23 regarding the enhancement of the rent payable by a ryot having a right of occupancy, shall, so far as they are relevant, be applicable, *mutatis mutandis*, to claims to abatement of rent under this section.

Provisions for enhancement applicable to abatement.

Chapter IV.—Of Ryots who do not possess a Right of Occupancy.

26. (1) Subject to the other provisions of this Act, a ryot who has not a right of occupancy shall not, against the will of his landlord, be entitled to retain possession of any land which he may, as a tenant, have held or cultivated: but a ryot who does not quit such land of his own accord, shall not be evicted otherwise than by the action of the Civil Court.

Ryot who has not a right of occupancy may be evicted at the will of his landlord, but only through the Court.

39 (2) No ryot, who does not possess a right of occupancy, may maintain a suit against his landlord—

Such ryot may not sue for determination of future rent or for abatement.

(*a*) for the determination of the rent at which he shall be entitled to continue to hold or occupy and cultivate land; or

(*b*) for abatement of the rent previously paid by him.

33 27. (1) When any such ryot has been let into possession otherwise than for a term certain, or having been let into possession for a term certain has held over on the expiry of such term with the consent, express or implied, of his landlord, such ryot may not be ejected unless a notice to quit has been served upon him as hereinafter provided.

Any such ryot let into possession otherwise than for a term, or holding over on expiry of term, may not be ejected without notice to quit.

(2) Such notice to quit shall be in writing and shall be served through the Civil Court (*a*) in districts or parts of districts in which the Fush or Umli year prevails, in or before the month of Jeyt; or (*b*) in districts or parts of districts in which the Bengali year prevails, in or before the month of Pous.

Notice to quit when to be given, and how to be served

34 28. When a ryot, who in the case mentioned in clause (1) of section 27 has, in accordance with the provisions of clause (2) of the same section, been served

Ryot served with notice to quit as provided in section 27.

with a notice to quit land, refuses to give up such land from the first day of the year next ensuing after service of such notice; or

when any such ryot, who has been let into possession of land for a term, refuses to give up such land upon the expiry of such term and has not the consent, express or implied, of his landlord to hold over,

or ryot holding after expiry of term without landlord's consent,

the landlord may, within three months from the expiry of the year in which such notice was served or from the expiry of such term, sue to eject such ryot; and, in any case in which such a suit has been instituted, no time subsequent to the year in which such notice was served or subsequent to the said term shall be taken into account so as to give to any such ryot any benefit which is by this Act given to settled ryots;

may be sued and ejected by Court. Period of wrongful holding not to count.

and such landlord, if he obtains a decree for ejectment against such ryot, shall be entitled to recover in execution of such decree the full letting value of the land for such time as he may be kept out of possession after the expiry of such year or such term as aforesaid, together with reasonable compensation for any other damage or loss that may have been caused to him by being so kept out of possession.

Such ryot when ejected liable for full letting value of the land, and also for damages

35 **29.** (1) A ryot who does not possess a right of occupancy shall not be liable to pay a higher rent than that payable by him for the previous year, unless a written agreement has been entered into by him and his landlord for the payment of such higher rent; or unless a notice demanding such higher rent has been served upon him within the time provided in clause (2) of section 27 for the notice therein mentioned.

Ryot who does not possess a right of occupancy not liable to pay higher rent, unless there be a written agreement, or unless a notice has been served

(2) When a notice demanding higher rent has been served upon any such ryot as provided in clause (1), such ryot, if he is unwilling to pay such enhanced rent, may relinquish the land before the first day of the year next ensuing after service of such notice. If he does not so relinquish the land, he shall be liable to pay the increased rent demanded by such notice from such first day of the year next ensuing: provided that he shall not in any case under this rule be liable to pay more than double the former rent.

Such ryot served with such notice may relinquish land. If he do not, he is liable to pay increased rent demanded.

Explanation.—When any such ryot is served with a notice to quit or pay a specified increased rent, and he elects to remain in possession of the land mentioned in such notice, the tenancy is not thereby determined, and such notice shall be treated as a notice under clause (1).

30. The money rent of a ryot or under-ryot not having a right of occupancy shall in no case exceed thirty-five per centum of the average annual value of the gross produce of the land held or cultivated by him, calculated as provided in clause (*c*) of section 24.

Limit of money rent of ryot or under-ryot not having a right of occupancy.

Chapter V.—Of the use of Land for Building Purposes.

31. When land used or let to be used for agriculture, horticulture, pasture, or any other similar pupose is held by any ryot, he shall not, without the permission of the landlord of such land, use any portion thereof for building or any other purpose inconsistent with that for which it was used or let to be used as aforesaid: provided that a ryot may without such permission erect upon such land a dwelling-house suitable for the use and occupation of himself and his family, together with such out-houses and offices as may be necessary thereto. Any ryot using land in contravention of the provisions of this section shall be liable on the suit of his landlord to pay by way of damages such sum as the Civil Court may deem equitable, and also to be ejected from the holding within which such land lies, if the Court be of opinion that the award of damages alone would not sufficiently meet the requirements of the case. 36

Ryot may not use land for building or other purpose inconsistent with use for which it was let.

Rule does not extend to erection of a suitable residence.

32. (*a*) When land used or let to be used for building or any purpose other than agriculture, horticulture, pasture, or the like, has been in the immediate possession of a tenant, whether under or without a lease, for the full period of twelve years after the commencement of this Act, such tenant shall, in the absence of any contract to the contrary, acquire a right of occupancy in such land, and shall not be liable to be ejected. 37

Possession for twelve years of land let for building or other such purpose gives a right of occupancy.

Provided that this section shall not be deemed to apply to any land situate within the boundaries of any municipality of the first or second class, constituted under the Bengal Municipal Act, 1876.

Proviso.

Explanation.—The possession of the father or other person from whom the tenant inherits shall be deemed to be the possession of the tenant, within the meaning of this rule, for the purpose of acquiring a right of occupancy.

(*b*) The interest of the person who has so acquired a right of occupancy shall be heritable, transferable, and devisable, and shall be liable to sale in execution of any decree of the Civil Court.

Such interest to be heritable, transferable, and devisable.

(*c*) If such tenant makes default in paying the rent of such land, the land together with the buildings or other works thereupon may be brought to sale in execution of a decree for arrears of such rent and shall be subject to the provisions of sections 56: provided that any such tenant may be ejected for a breach of any condition of his tenancy for which breach he is liable to ejectment by virtue of a contract between him and his landlord, and which cannot, in the opinion of the Court, be justly made the ground of compensation to be paid to the landlord.

In default of payment of rent, land with buildings, &c., may be sold.

33. When a tenant has acquired a right of occupancy in any land under the provisions of section 32, if the rent of such land has not been enhanced during the previous ten years, the land- 42

Rule for enhancing the rent of land used for building or other such purpose.

lord thereof shall be entitled from time to time to enhance such rent, so that it may be equal to the rent paid by other tenants for land in the neighbourhood having similar advantages and used for similar purposes, or so that it may be equal to five per centum of the market value of such land.

CHAPTER VI.—OF MERGER.

43 **34.** (*a*). When by purchase at a private or public sale, by gift, succession, or will, the same person becomes the proprietor of an estate and the owner of a tenure in such estate, such tenure shall, unless such proprietor can show that he had a contrary intention, be presumed to be merged in the proprietary interest and to be extinguished by the fact of the same person being owner of the estate and the tenure, subject, however, to the following conditions:—

When same person becomes owner of an estate and a tenure therein, the tenure to be merged in the estate.

(1) Such person must be owner of the estate and the tenure in the same right and at the same time.

(2) The presumption shall not arise in the case of a minor until he becomes of full age, or in the case of a person of unsound mind until he becomes of sound mind.

(3) Such merger shall not operate to the prejudice of any person having a lien upon such tenure or of any undertenure-holder or ryot.

(4) Subject to the provisions of the law for the time being in force relating to sales of land for arrears of Government revenue, and subject to the provisions of this Act as to sales for arrears of rent without, or in execution of, a decree, such proprietor shall have the same rights and be subject to the same liabilities as the previous holder of such tenure had or was subject to, in respect of those persons between whom and such tenure-holder the relation of landlord and tenant existed:

provided that when, in the case of two or more persons being coparceners, one or more, but not all, of such persons become the owners of a tenure in such estate, no merger shall take place.

Proviso

(*b*) Upon the expiry of three months from the date when such person so became owner of the estate and the tenure, such contrary intention may be proved in the following manner and not otherwise,—that is to say, by the production of a deed declaratory of such intention and duly registered within such period of three months, and by proof that a copy of such deed was published in the manner provided in sub-clauses 4 and 5 of clause (*a*) of section 218 for the notification therein mentioned.

Deed declaratory of intention must be registered within three months and published upon land comprised in tenure.

Provided that if such person become owner of the estate and the tenure before the commencement of this Act, the said period of three months shall run from the commencement of this Act.

Proviso.

35. The provisions of section 34, so far as they are applicable, shall apply, *mutatis mutandis*, to a tenure-holder acquiring an undertenure of the first degree; to an undertenure-holder of the first degree acquiring an undertenure of the second degree; and so on in order; and also (subject to the proviso in clause (*f*) of explanation 4 of section (19), to a proprietor, tenure-holder or undertenure-holder acquiring an occupancy holding the rent of which was previously payable directly to such proprietor, tenure-holder or undertenure-holder. 44

Provisions of section 34 to apply to other cases in which the owner of a superior interest acquires an interest immediately inferior

36. It is hereby declared to be, and to have always been, the law in the territories under the administration of the Lieutenant-Governor of Bengal that, when the Secretary of State for India in Council acquires an estate by purchase or otherwise, the proprietary interest in the land included in such estate is merged in the paramount title of such Secretary of State, and extinguished by the fact of such proprietary interest and such paramount title meeting in the same person. The third and fourth conditions mentioned in clause (*a*) of section 34 shall apply to every such estate acquired by the Secretary of State for India in Council. Nothing contained in this section shall be construed to interfere with the operation in any such estate of Act VIII of 1879 passed by the Lieutenant-Governor of Bengal in Council, or of any Act for the time being in force for the recovery of Public Demands. 45

Proprietary interest merged in paramount title, when an estate is purchased by Secretary of State for India in Council.

Illustration.

An estate named Sultanpur is purchased by the Collector of Burdwan on behalf of the Secretary of State for India in Council at a sale for arrears of land revenue. A, B, and C are ryots holding land included in this estate, and before the sale they paid certain annual sums as rent direct to the proprietor of Sultanpur. After the sale they are liable to pay the same annual sums to the Secretary of State for India in Council, and such sums are so payable, not as rent, but as land revenue.

CHAPTER VII.—OF THE REGISTRATION OF TRANSFERS OF TENURES, UNDERTENURES AND OCCUPANCY-HOLDINGS.

37. Subject to the provisions of section 46, every succession to, or transfer of, a tenure or undertenure or any portion thereof, or of an occupancy holding shall within six months after such transfer or succession be registered in the sarrishta or Rent-Office of the landlord to whom the rent of such tenure, undertenure or occupancy-holding is payable; and such landlord shall admit to registry and otherwise give effect to every such transfer or succession: provided that no landlord shall be bound to admit to registry or give effect to any division or distribution of the rent of such tenure, undertenure, or occupancy-holding, nor shall any such division or distribution be valid against such landlord without his consent in writing. 46

Tenant to register transfer of his tenure, undertenure or holding in his landlord's sarrishta. No division of the rent binding on landlord without his consent in writing.

Explanation 1.—The term "transfer" in this section means and includes a transfer by private sale, gift, or exchange, or by sale in execution of a decree.

Explanation 2.—The term "succession" in this section includes devolution by will or by inheritance. In the case of a succession, when there are more heirs than one, all such heirs shall be entitled to have their names registered.

Procedure when landlord objects to register transfer of holding by private sale.

38. Notwithstanding anything contained in section 37, the landlord may, if he thinks fit, object to register the transfer of any occupancy holding by private sale, and in such case he shall be bound to pay to the transferer within fifteen days of the application for registration the price at which such transferer had covenanted to transfer such holding, and such holding shall thereupon be held to be unoccupied *ryotee* land at the disposal of such landlord. If the landlord has reason to believe that the price at which it is alleged that the holding has been sold has not been *bonâ fide* offered, he may apply to the Civil Court to fix the reasonable price payable for such holding.

47 Landlord entitled to fee on transfer of a tenure, undertenure or occupancy-holding.

39. In every case of succession to, or transfer of, a tenure, undertenure or occupancy-holding, not being a transfer by sale in execution of a decree for arrears of its own rent, the landlord thereof is entitled to a fee, which shall be paid upon the registration of such transfer or succession. Such fee shall be two per centum upon the annual rent of such tenure or undertenure, and two pice in every rupee upon the annual rent of such occupancy-holding, provided that no such fee shall be less than one rupee in any case, or be more than one hundred rupees in the case of a tenure or undertenure, or five rupees in the case of an occupancy-holding. In default of payment of such fee, such landlord may refuse to register such transfer or succession.

48 Effect of transfer and of registration of transfer or succession upon liability for rent.

40. (*a*) In every case of transfer of a tenure, under tenure or occupancy holding, not being a transfer by sale in execution of a decree, the transferer shall cease to be, and the transferee shall become, personally liable for the rent of such tenure, undertenure or holding from and after the date of application for registry.

(*b*) In every case of transfer of a tenure, undertenure or occupancy holding by sale in execution of a decree for arrears of the rent thereof, the transferee shall be personally liable for such rent from and after the date of the confirmation of such sale by the Court. The former tenant shall be personally liable for such rent up to such date.

(*c*) In every case of transfer of a tenure, or undertenure by sale in execution of a decree not being a decree for arrears of the rent thereof, it shall be the duty of the tenant whose interest is so transferred to give notice of such transfer to his landlord. If he gives such notice within one month after the confirmation of the sale, he shall cease to be, and the transferee shall become, personally liable for the rent from the date of the confirmation of the sale. If he omits to give such notice within such time, he shall remain personally liable for the rent until he gives notice of the transfer.

(*d*) In every case of succession to a tenure, undertenure or occupancy-holding, the person succeeding shall, upon taking possession, be personally liable for such rent from and after the death of the previous tenant.

49 Consequence of non-registration of transfer other than transfer by sale in execution

41. If in any case of transfer of a tenure, undertenure, or occupancy-holding not being a transfer by sale in execution of a decree, application for registration of such transfer is not made and the proper fee tendered within six months as provided in section 37, the transferer shall remain liable for the rent, and the landlord shall not be bound to recognize the transfer. Such landlord shall, however, admit such transfer to registry after the expiry of the said period of six months upon payment of a fee of ten times the amount of the fee receivable under section 39, provided that no such fee shall be less than ten rupees in any case, or be more than one thousand rupees in the case of a tenure or undertenure, or more than twenty rupees in the case of an occupancy-holding.

50 Consequence of non-registration of a succession, or of a transfer by execution sale, in case of a tenure or undertenure.

42. (*a*) If in any case of succession to a tenure or undertenure, or in any case of transfer thereof by sale in execution of a decree, application for registration of such succession or transfer is not made by all or any of the transferees or successors, and the proper fee tendered within six months as provided in section 37, the landlord shall give the tenant in possession of such tenure or undertenure notice in writing to appear and register such succession or transfer; and if this is not done within one month of the service of such notice he shall be entitled to attach and hold possession of such tenure or undertenure.

Landlord may collect rents of tenure or undertenure attached, but must account for balance after deducting his own rent, &c.

(*b*) After the attachment of such tenure or undertenure, and until such succession or transfer is registered, such landlord shall be entitled to collect the rents from the undertenure-holders or ryots, and after deducting therefrom the cost of the attachment, the expenses of collection, and the rent due to himself, he shall hold the balance in trust for the person entitled by succession or by purchase at such sale.

If collections insufficient, person entitled by succession or purchase liable for the deficiency.

(*c*) If the rents so collected from the undertenure-holders or ryots are insufficient to discharge the cost of the attachment, the expenses of collection and the rent due to such landlord, the person so entitled by succession or purchase at the execution sale shall be liable for the deficiency, and such landlord may proceed against him for the recovery of the same, subject, however, to the provisions of section 56.

Landlord shall after six months admit tenure or undertenure to registry on payment of fine.

(*d*) Such landlord shall at any time after the expiry of the said period of six months admit to registry such succession or transfer by execution sale, upon payment of a fee of ten times the amount of the fee receivable under section 39, provided that no such fee shall be less than ten rupees or more than one thousand rupees.

51 **43.** If in any case of succession to a holding, or in any case of transfer thereof by sale in execution of a decree, such succession or transfer is not registered within six months as provided in section 37, by all or any of the transferees or successors, the landlord shall give the tenant in possession of such holding notice in writing to appear and register such succession or transfer; and if this is not done within one month of the service of such notice, he shall be entitled to attach and hold possession of such holding, and may cultivate it or let it for cultivation. Such landlord shall at any time after the expiry of the said period of six months admit to registry such succession or transfer by execution sale, upon payment of a fee of ten times the amount of the fee receivable under section 39, provided that no such fee shall be more than twenty rupees. If the person entitled by succession or by transfer by an execution sale fails to apply for registration and to tender the proper fee before the expiry of the Fusli or Umli or Bengali year, whichever prevails in his district, next ensuing after such succession or transfer, the landlord shall be at liberty to apply to the Civil Court for a declaration that such holding is at his disposal as unoccupied *ryotee* land. A notice of such application having been made shall thereupon be issued by the Court or to the person entitled by succession or transfer to be registered, and if the succession or transfer is not registered within one month after such notice shall have been served to the satisfaction of the Court, the Court may declare such holding to be at the disposal of such landlord as unoccupied *ryotee* land.

Consequence of non-registration of a succession, or of a transfer by execution sale, in case of a holding.

52 **44.** If a landlord fails or refuses to admit to registry and otherwise give effect to a succession to, or transfer of, a tenure, undertenure or occupancy-holding, in the manner provided in section 37, and does not, in the case of an occupancy-holding proceed under section 38, the transferer in any case of transfer by private sale, gift, or exchange, or in any case the transferee or successor may sue such landlord in the Civil Court, and if no sufficient grounds are shown why such succession or transfer should not be registered, such Civil Court shall make a decree directing the registry thereof, and may further award damages in any case in which pecuniary loss has resulted from such neglect or refusal to admit to registry, and otherwise give effect to such succession or transfer.

If landlord fails or refuses to register, civil suit will lie to compel him. Damages may be awarded where pecuniary loss has resulted.

53 **45.** (*a*) In every case in which a permanent tenure or undertenure is transferred by private sale, gift or exchange, or by sale in execution of a decree, the proprietor or tenure-holder, as the case may be, shall be entitled to demand from the transferee substantial security to the amount of half the yearly rent payable for such tenure, and he may refuse to register such transfer until such security has been tendered and accepted.

Transferee or devisee of permanent tenure or undertenure to give security to the extent of half the yearly rent.

(*b*) If in any case of a transfer such security be required and be not furnished within six months from the date of such transfer, the proprietor or tenure-holder as aforesaid shall be entitled to attach and hold possession of the tenure or undertenure to the exclusion of the transferee until the said security shall be furnished. The provisions of clauses (*b*) and (*c*) of section 42 shall apply to every such attachment.

If security be not furnished within six months, proprietor may attach the tenure.

(*c*) If the security tendered by any transferee is rejected by the proprietor or tenure-holder as aforesaid, and such transferee is dissatisfied with such rejection, he may make an application to the Civil Court for an order directing such proprietor or tenure-holder to receive such security and register such transfer. Such Court if satisfied of the sufficiency of the security tendered, may make such order, or, if not so satisfied, may make an order, rejecting such application. No appeal shall lie from any such order.

Application to Civil Court, if security tendered be refused. Court may make order. No appeal from such order.

54 **46.** The Board of Revenue may prescribe for any class of landlords a form in which they shall maintain a register of all successions to, or transfers of, tenures, undertenures, and occupancy-holdings, the rent of which is payable to such landlords, and may make, and when made, cancel or alter rules for the maintenance of such register; and may further provide a penalty not exceeding fifty rupees for the breach of any such rule. Every person concerned in any such succession or transfer shall be entitled, upon payment of a fee of four annas, to receive a copy of the entry relating thereto made in such register. Such copy shall be signed by such landlord, or by the person who usually receives the rents on his behalf, and shall be sealed with such landlord's seal, when he commonly uses a seal.

Board of Revenue may prescribe form of Register of successions and transfers. Persons concerned entitled to copies of entries on payment of fee of 4 annas.

In the case of landlords for whom no form of register is prescribed under this section, the acceptance of rent from the successor or transferee shall be deemed to be equivalent to the registration of the succession to, or transfer of, a tenure, undertenure, or occupancy-holding.

Acceptance of rent equivalent to registration in certain cases.

Chapter VIII.—Of Rent, Instalments of Rent, Receipts for Rent, Deposit of Rent, Apportionment of Rent, and Hypothecation for Rent.

55 **47.** (*a*) Rent payable by a tenure-holder or under-tenure holder shall be paid upon such dates and in such instalments as are customary or may have been agreed upon between such tenure-holder or undertenure-holder and his landlord; and, in the absence of any such custom or agreement, upon the latest days of payment, and in the instalments, fixed as provided in clause (*b*) of this section.

Rent of tenure holder or under-tenure holder payable in what instalments and upon what dates.

(*b*) Rent payable by a ryot shall be paid on such latest days of payment, not being more than four in each year, as the Board of Revenue may fix with reference to the existing customs and time of harvest in each district. When any agreement has been made or any custom has existed

Rent of ryot payable in what instalments and on what dates.

before the commencement of this Act regulating the instalments in which such rent is payable, the Board shall fix the instalments payable on each such latest day of payment. In the absence of any such agreement or custom, the Board shall fix the portion of the whole annual rent to be paid on each such latest day of payment.

Notice of the latest days of payment fixed for each district, and of the instalments or portion of rent payable upon each such latest day shall be given—

by posting a copy of the Board's order at every police station in the district, and in each of the courts or offices of the following officials, that is to say, the District Judge, the Collector, the Magistrate, and all Moonsifs, Officers in charge of Subdivisions and Sub-Registrars of Assurances in the district; and

by proclaiming such order by beat of drum at the head-quarters of the district and of every subdivision therein, and in any other places which the Lieutenant-Governor of Bengal may direct.

No change shall be made in the latest days of payment, instalments, or portions of rent so fixed, except by the said Board, by notice to be published in the manner above described, at least three months before the close of the Bengali, Fusli, or Umli year in which such change is to take effect.

56 48. Every instalment of rent not paid or discharged before sunset of the latest day of payments upon which it is payable according to the provisions of section 47, shall be deemed to be an arrear of rent, and shall bear interest from such day or date up to the date of any decree that may be passed therefor at the rate of twelve per centum per annum; and such interest shall be decreed in every case in which any such arrear is recovered in any Civil Court, unless the tenant can show that he was prevented by causes beyond his control from paying or discharging such instalment upon such latest day of payment.

What to be deemed an arrear of rent. Interest on arrears.

Receipts for Rent.

57 49. (*a*) Every tenant who makes a payment to his landlord of rent, or of any money recoverable as rent, is entitled to obtain thereupon and without delay a written receipt for the amount paid by him. Such receipt shall specify the date of payment; the amount paid, on account of principal and interest respectively, or, where rent is paid in kind, the quantity of produce delivered; the tenure, undertenure, holding, or land in respect of which such rent or money is paid, or produce delivered; the name or names of the person or persons registered in the landlord's sarrishta as the tenant or tenants; and the instalment and year on account of which such payment is declared by the tenant to be made, or in the absence of any such declaration, the instalments and year to which it has been credited by the landlord. The landlord shall retain a counterpart of such receipt, and similar particulars shall be inserted in such counterpart.

Tenant making payment to his landlord entitled to a receipt. What particulars to be inserted in such receipt.

(*b*) Every receipt which does not contain substantially the above particulars shall be deemed to be an acquittance in full of all demands for rent up to the date on which the receipt was given.

Receipt not containing particulars to be deemed to be an acquittance in full.

(*c*) Every tenant shall be entitled to receive from his landlord within three months after the expiry of the Bengali, Fusli, or Umli year, whichever prevails in his district, a statement of account for the past year showing the tenure, undertenure, holding, or land for which such tenant pays rent to such landlord, and the name or names of the person or persons registered in the landlord's sarrishta as the tenant or tenants; the annual rent payable therefor; the amount of rent in arrear at the beginning of such year; the payments made during the year on account of principal and interest respectively; the portion of each payment credited to the rent of such year, and the portion credited to the arrears of previous years; and the amount, if any, remaining unpaid at the close of such year. The landlord shall retain a counterpart of such statement, and similar particulars shall be inserted in such counterpart.

Tenant entitled to statement of account at close of the year.

(*d*) Every landlord, who from the commencement of this Act omits or refuses to give to any tenant on demand a receipt or statement of account containing the above particulars, shall be liable to the penalty provided by section 94.

Penalty for omitting or refusing to furnish receipt or account-statement in form prescribed.

Deposit of Rent in the Collectorate.

50. (1) Subject to the conditions specified in 58 section 51, a tenant may in any of the cases hereinafter mentioned deposit the rent payable by him in the Collectorate treasury of the district, or, where there is a subdivision, in the treasury of the subdivision, within which district or subdivision the tenure, undertenure, holding, or land for and in respect of which such rent is payable, or any portion thereof is situate; that is to say—

Tenant may in what cases deposit in the Collectorate his rent which has become due.

(*a*) when the tenant has reason to believe that the person to whom his rent is payable will not be willing to receive the same, and to grant him a receipt:

(*b*) when such rent is payable to coparceners jointly and such tenant was unable to obtain the joint receipt of such coparceners therefor, and no manager has been appointed by them or by the District Judge.

(*c*) when such tenant entertains a *bonâ fide* doubt as to who is entitled to receive such rent.

(2) Subject to the conditions and in the cases aforesaid, such rent may also be deposited with any Public Officer specially empowered by the Lieutenant-Governor of Bengal to receive such deposits of the rents of tenures, undertenures, holdings, and lands situate within a specified area. When a Public Officer has been so specially empowered, no deposit of the rent of any tenure, undertenure, holding or land situate within such area shall be

Public officer may be specially empowered to receive deposits of rent.

received at any Collectorate or Subdivisional Treasury.

59 51. Such deposit of rent shall be subject to the following conditions: that is to say—

Conditions on which rent may be deposited.

(*a*) Such rent shall be deposited within fifteen clear days from the first date on which, after such rent fell due, such Treasury or Public Office is open. When the Collectorate or Subdivisional Treasury or Public Office is closed on the fifteenth day, the deposit may be made on the day on which such Treasury or Public Office re-opens.

(*b*) Such deposit shall be made by presenting a written application accompanied by a fee of 8 annas and by a written declaration in, or as nearly as possible in, the form A in the second Schedule annexed to this Act. Such declaration shall be made by the tenant; or, if he is not personally cognizant of the facts forming the subject-matter thereof, then by a person so personally cognizant.

(*c*) The rent deposited shall be the full amount of rent due by such tenant to such landlord in respect of the tenure, undertenure, holding or land mentioned in section 50, and of the interest, if any, due at the time of such deposit.

60 52. The Officer in Charge of the Collectorate Treasury or Treasury of the Subdivision or such Public Officer as aforesaid shall receive any deposit of rent made under any of the circumstances specified in section 50, and in compliance with the conditions mentioned in section 51, and shall give a receipt for the same under his official seal. Such receipt shall operate as an acquittance for the rent payable by such tenant and deposited as aforesaid, in the same manner and to the same extent as if such money had been received

Receipt to be granted under his seal by Treasury or Public Officer for rent so deposited, and to be a valid acquittance.

(*a*) in case (*a*) of section 50, by the person specified in the application as the person to whom such rent was payable;

(*b*) in case (*b*) of section 50 by the coparceners jointly; or

(*c*) in case (*c*) of section 50, by the claimants jointly or by the claimant entitled to the receipt of such rent.

53. (*a*) The Officer in Charge of the Collectorate Treasury or the Treasury of the Subdivision or such Public Officer as aforesaid shall forthwith have posted in a conspicuous place in his office a notification of such deposit, addressed, according to the purport of the application made by the depositor and the declaration therewith presented, to the person entitled to receive such rent or to the coparceners or claimants aforesaid. If no application for payment is made under clause (*b*) within fifteen days after the posting of such notification, such Officer shall within fifteen days after the expiry of the said fifteen days cause a notice of such deposit to be served upon such person, or coparceners, or claimants as aforesaid. Such notice shall be served free of charge.

Notice of the deposit to be given to the persons entitled, or claiming to be entitled, to the rent:

(*b*). Such rent so deposited may, upon an application being made to this effect be paid (1) to such person entitled to the same; or (2) to such coparceners upon their joint receipt, or, if a common manager be appointed on their behalf by themselves or by the District Judge, to such common manager; or (3) to such claimants upon their joint receipt, or to any of them who has obtained a decree declaring or establishing his title. Any person to whom payment may be made in accordance with these provisions may receive such payment through a duly authorized agent.

and rent deposited may upon their application be paid to such persons on their receipt or joint receipt, or receipt of duly appointed agent.

(*c*). If no payment be made under clause (*b*) for a period of three years from the date of such deposit, the amount deposited may be repaid to the depositor upon his application and on his giving back the receipt mentioned in section 52. Such amount may at any time within such period of three years be paid, on the return of such receipt and upon the joint application of the depositor and of the person or persons entitled to payment under clause (*b*), in any manner requested in such application.

Refund to depositor or payment at joint request of him and landlord.

Apportionment of Rent.

54. When two or more persons become separately entitled to separate portions of an area of land which forms the subject of a separate tenancy, and such portions of such area have been or can be divided by metes and bounds, such persons shall be entitled to have such rent apportioned, and after its apportionment to receive separately the shares of rent apportioned upon such portions respectively. 62

Apportionment of rent in what cases.

55. Such apportionment may be made by mutual agreement between such persons and the tenant by whom such rent is payable. If such persons and such tenant cannot agree amongst themselves as to the manner in which such apportionment shall be made, the Civil Court may, upon the application of any such persons, or of such tenant, proceed to make such apportionment, and may to this end direct a measurement of the whole or any portion of such land. 63

Apportionment how to be made.

Hypothecation for Rent.

56. (*a*) Every tenure, undertenure, and occupancy-holding shall be deemed to be hypothecated for the rent thereof, and such rent shall be a first charge thereupon. When such rent is in arrear, the landlord shall not be entitled to resort to any other process for the recovery thereof, save as provided in Chapter XIV, until he has first brought such tenure, undertenure, or holding to sale either in a summary manner or in execution of a decree for such rent, as he is by this Act empowered in that behalf.

Every tenure, undertenure, and holding to be deemed hypothecated for its own rent, which shall be a first charge thereupon.

(*b*) If any such tenure or undertenure, or in any case in which a holding is so saleable, any such holding be brought to sale in execution of a decree for money, obtained by a person other than the landlord, such landlord shall be entitled to be first paid out of the sale-proceeds any rent

which may be due to him in respect of such tenure, undertenure, or holding: and the balance only of such sale-proceeds after payment of such rent shall be available for the liquidation of the decree-holder's claim, or for distribution among creditors entitled to such distribution.

CHAPTER IX.—OF COPARCENERS.

65 57. (1) When coparceners, who jointly own an estate, tenure or undertenure, disagree as to the joint management thereof, and in consequence there has ensued or is likely to ensue,

District Judge may direct coparceners, who disagree, to be served with notice to show cause why they should not appoint a common manager.

(*a*) inconvenience to the public, or

(*b*) injury to private rights,

the District Judge may upon the application in case (*a*) of the Collector, and in case (*b*) of any one having an interest in such estate, tenure or undertenure, direct a notice to be served upon all such coparceners, calling upon them to show cause why they should not appoint a common manager.

Explanation.—In case (*b*) the application may be made either by one or more of the coparceners themselves, or by any other interested person: but no coparcener shall be entitled to apply unless he is actually in possession of the interest he claims, and unless his name and the extent of such interest have been registered under Act VII of 1876, passed by the Lieutenant-Governor of Bengal in Council.

(2) If such coparceners fail to show such cause within one month after service of such notice, or if they show cause which in the opinion of the District Judge is not sufficient, such District Judge may make an order directing such coparceners to appoint a common manager. A copy of such order shall be served upon any coparcener who did not appear before it was made.

If no cause, or cause not sufficient, is shown, District Judge may make an order directing the appointment of a manager.

66 58. (1) If such coparceners do not within one month after the making of such order, or, where such order has been so served, within one month after such service, appoint a common manager and report such appointment for the information of the District Judge, such District Judge may,

If such order be not obeyed, District Judge may appoint manager.

(*a*) direct that such estate, tenure, or undertenure be managed by the Court of Wards in any case in which such Court of Wards assents to undertake the management thereof: or,

(*b*) in any case, appoint a manager, in which event such coparceners shall be bound by such appointment.

(2) The Lieutenant-Governor of Bengal may appoint a person for any district to manage all estates, tenures, and undertenures to which the provisions of this section apply, and when any such appointment has been made, such person shall be appointed manager under sub-clause (*b*) of clause (1) by the District Judge: unless in the case of any estate the Judge shall think fit to appoint one of the coparceners themselves as manager.

(3) In any case in which the Court of Wards undertakes the management of an estate, tenure, or undertenure under sub-clause (*a*) of clause (1), so much of the provisions of the Court of Wards Act, 1879, as relate to the management of immoveable property shall apply to such management.

"The Court of Wards Act, 1879," to apply to management by Court of Wards.

67 59. In any case in which a manager is appointed under sub-clause (*b*) of clause (1) of section 58, the District Judge may settle and from time to time alter the remuneration of such manager, which may be a fixed salary or a percentage of the moneys collected by him as manager. Such manager shall give such security for the proper discharge of his duties as to the District Judge shall appear reasonable and sufficient. For the purposes of management he shall have, and be entitled to exercise, the same powers as the coparceners jointly might, but for his appointment, have exercised. He shall keep regular accounts, and shall allow the coparceners or any of them to inspect and take copies of such accounts. He shall be removable by the order of the District Judge and not otherwise, and may be removed upon the application of the Collector, or any person interested in the estate, tenure or undertenure.

Salary of manager. Manager to give security. Powers of manager. Duty to keep account. Removal.

68 60. The District Judge may at any time direct that the management be restored to the coparceners, if he is satisfied that such management will be conducted by them jointly without inconvenience to the public or injury to private rights.

Management may be restored to coparceners, if prepared to conduct it properly.

69 61. Except in the cases hereinafter excepted, rent payable to coparceners shall be paid upon the joint receipt of all such coparceners, or, where a manager has been appointed by them or by the District Judge, upon the receipt of such manager; and all such coparceners must be made parties to any suit brought for the recovery of arrears of any such rent. Any such suit brought by one or more coparceners and not by all, or to which all have not been made parties, shall be dismissed with costs.

Rent to be paid to coparceners on their joint receipt or on that of a manager. One coparcener may not sue for his share of rent separately.

Exception 1.—When an agreement has been made between a tenant and one or more of several coparceners with the consent of the other or others of them, that the share of rent to which such one or more coparceners is or are entitled shall be paid directly to him or them, such share of rent shall be so payable and recoverable.

Exception 1—where tenant has contracted to pay a share of the rent separately.

Exception 2.—When a tenant has usually paid to one or more of several coparceners, without objection from the other or others of them, the share of rent to which such one or more coparceners is or are entitled, such share of rent shall be so payable and recoverable.

Exception 2—where tenant has been in the habit of paying a share of the rent separately.

Exception 3.—When a coparcener is unable to obtain his share of the rent payable by a tenant in consequence of collusion between such tenant and

Exception 3—where coparcener cannot get his share of rent in consequence of collusion.

the other coparceners, he may sue to recover his share of rent separately, and shall in such suit make such other coparceners defendants.

70 **62.** A coparcener may not, otherwise than conjointly with his other coparceners or through a manager appointed by all the coparceners or by the District Judge, bring a tenure to summary sale under the provisions of Chapter XVI, or measure lands in the possession or occupation of the tenants of such coparceners, or enhance the rents of such tenants, or, where a suit is necessary to effect such measurement or enhancement, maintain such suit without making such other coparceners parties thereto.

One coparcener may not bring tenure to summary sale, or measure the lands or enhance the rents of the tenants.

Chapter X.—Of some Miscellaneous Rights of Landlords and Tenants.

71 **63.** Proprietors are competent to grant leases, for any period even to perpetuity, and in any form, and at any rent most convenient to the contracting parties and most conducive to their respective interests, of land which was not at the time of the Permanent Settlement held by tenure-holders, undertenure-holders or ryots, or which being so held has since that time come into the *khas* or actual possession of such proprietors, subject, however, to the other provisions of this Act and to the following conditions, and not otherwise :—

Proprietors competent to grant leases for any period, in any form, and at any rent.

(1)—All engagements contracted with tenants shall be specific as to the conditions thereof and as to the amount of rent reserved.

Conditions.

(2)—All impositions upon the tenants under the denomination of *abwab, mahtut*, and other appellations, in addition to the actual rent, shall be deemed illegal, and shall subject the person imposing them to the penalty provided by section 93; and all stipulations and reservations for the payment of such shall be null and void.

(3)—No person contracting with a proprietor or employed by him in the management of the collections shall take charge of the lands or collections without a written authority signed by such proprietor.

A proprietor may make a grant of land free of rent, but such grant shall be binding only upon the grantor or his heirs, or any person claiming through him or them.

72 **64.** A landlord may not—

(*a*)—under any pretence whatever, impose on his tenants any new cess or other payment not taken into account in fixing the Government revenue, or not sanctioned by law or by ancient custom approved by the Revenue authorities;

Landlord may not impose abwabs on his tenants;

(*b*)—or compel the attendance of his tenants for the adjustment of their rents or for any other purpose; or adopt any means of compulsion for enforcing payment of rent other than the means provided by this Act.

or compel the attendance of his tenants, or enforce payment of rent otherwise than according to law.

73 **65.** A landlord is bound to maintain his tenant in the peaceable and quiet possession and enjoyment of the tenure, undertenure, holding or land in respect of which the relation of landlord and tenant exists between them, so long as such relation exists. This duty extends only to interruption or disturbance by the landlord, or any one claiming under or paramount to him. It does not extend to interruption or disturbance by third parties.

Landlord bound to put and maintain tenant in possession.

In the case of a new letting the landlord is bound, upon the tenant's request, to put him in possession of the property demised.

74 **66.** A person having an interest in land is not competent to grant a valid lease of such land for a term exceeding his own interest.

Lease may not be granted for term exceeding lessor's interest.*

When a lease has been granted for a term exceeding the lessors's interest, such lease is valid to the extent of such interest and is voidable only as to the excess: provided that, if such lessor after granting such lease acquire such excess, such lease shall be valid for such excess between such lessor and such lessee and persons claiming under them or either of them respectively.

Lease for term exceeding lessor's interest valid to the extent of such interest and voidable as to excess merely.

If a person grants a lease of land in which he has no interest to a lessee who obtains possession of such land under such lease, and if such person afterwards acquires an interest in such land, such lease shall be valid to the extent of such after-acquired interest between such lessor and such lessee and persons claiming under them or either of them respectively.

Lease granted by person having no interest valid to extent of interest subsequently acquired.

75 **67.** Subject to the provisions of section 62, and if not restrained from so doing by express engagement with the occupants of the land, a landlord is entitled to make a general survey and measurement of all land comprised in any estate, tenure, undertenure or holding of the rents of which he is in receipt, whether such land be rent-paying or rent-free, and is further entitled to enter upon such land for the purpose of making such survey and measurement.

Landlord entitled to make general survey and measurement, unless restrained by contract.

Illustrations.

(*a*)—A., a proprietor, grants a portion of his estate in patni to B., the patni rent payable to A. being fixed at Rs. 500. The ryots, as a necessary consequence, pay their rents to B. Both A. and B. are entitled to make a general survey and measurement of the lands comprised in the patni lease.

(*b*)—A. is the proprietor of an estate. B. holds lakhiraj land situated within the local limits of A.'s estate. A is entitled to measure B.'s lakhiraj land.

76 68. (*a*). In any case in which a measurement of land is made by order of a Civil Court or of a Collector in any suit between landlord and tenant, such measurement shall be made according to the Government measure of 14,400 square feet to one standard bigha. If the rights of the parties to such suit are regulated by any different local measure depending upon a standard pole of the pergunnah in which the land is situate, the Government measure shall be converted into such local measure for the purposes of such suit

Measurement in suits between landlords and tenants to be made according to Government standard of measurement.

Conversion into local measure, when necessary.

(*b*). If any dispute as to the length of such standard pole arises in any suit under this Act, the Collector shall in any suit before himself, or in any suit before a Civil Court on a reference made for this purpose by such Civil Court, determine the proper length thereof. An appeal shall lie from the Collector's decision to the District Judge. If no such appeal be preferred, the decision of the Collector shall be final and conclusive.

Determination of the length of the standard pole in case of dispute.

77 69. (*a*). A tenant is bound to use the land which he holds as tenant in a reasonable manner for the purpose for which it was let or has been customarily used. A ryot having a right of occupancy may cultivate any kind of crop or produce he chooses; and a ryot not having a right of occupancy may cultivate any kind of crop or produce he chooses, unless barred from doing so by specific contract with his landlord; but no ryot may, without the consent of his landlord, materially alter the condition of the land held by him, so as to render it permanently unfit for agricultural or horticultural purposes: provided that any ryot may without such consent make any of the improvements hereinafter specified, subject, however, to the two following conditions:—

Tenant may not permanently alter condition of the land. Proviso as to improvements.

(1)—Nothing shall be deemed to be an improvement which does not lastingly facilitate the cultivation of land, or lastingly increase the productive powers of land:

(2)—No improvement which is made without the written consent of the landlord shall be a bar to any enhancement which the landlord might otherwise have been entitled to claim.

79

(*b*)—The improvements referred to in this section are the following:—

(1) the making of tanks, wells and other works for the storage, supply, or distribution of water for agricultural purposes:

(2) works for the drainage of land, or for the protection of land from floods or from erosion or other damage by water:

(3) the reclaiming, clearing, or enclosing of land for agricultural purposes:

(4) the renewal or restoration of any of the foregoing works, or alterations therein, or additions thereto.

70. No tenant shall, in any case in which his landlord's interest has been transferred, be liable to the transferee for rent which became due after the transfer and was paid to the landlord whose interest was so transferred, unless such transferee has given notice of the transfer to such tenant. When there is more than one tenant paying rent to the landlord whose interest is transferred, a general notice from the transferee to such tenants will suffice. Such general notice shall be published by affixing a copy thereof at the mal cutcherry of each village in which the lands transferred may lie, or at some conspicuous place in such villages, or upon such lands, and also by proclaiming with beat of drum in such village or upon such lands that such notice has been so affixed.

Tenant not liable to transferee of landlord's interest for rent paid to former landlord without notice of the transfer.

78

71. A ryot having a right of occupancy may not sub-let his holding or any part thereof, without the written permission of his landlord. If, however, he shall have sub-let without such permission, such demise shall be valid as between such occupancy ryot and his under-ryot: but it shall not operate to debar the landlord from applying for distraint of the produce of the lands so sub-let in the manner provided in Chapter XIV for the recovery of an arrear of rent due to such landlord.

Ryot having right of occupancy may not sub-let without written permission.

79

72. Subject to the other provisions of this Act, a tenancy is determined as between the parties thereto by any of the following occurrences in the following cases respectively, that is to say—

Relation of landlord and tenant in what cases determined and by what occurrences.

(1)—in the case of a lease for a term—by the expiry of such term, unless the tenant holds over without objection made by the landlord, or unless the tenant has a right to the possession of the land otherwise than by virtue of the lease:

By expiry of term—exception.

(2)—in the case of a lease by a landlord whose interest is for a limited time only and who has no power to create a tenancy extending beyond the period of such interest—by the expiry of the term of such interest and the determination of such landlord's possession, unless the tenant has a right to the possession of the land otherwise than by virtue of the lease:

By determination of landlord's limited interest

Exception.

(3)—in the case of a ryot holding otherwise than under a lease for a definite term—by relinquishing the whole of the land held or cultivated by him as one holding: provided he has given notice of his intention in writing to the person entitled to the rent of such land or to his authorized agent—in districts or parts of districts where the Fusli or Umli year prevails, in or before the month of Jeyt—and in districts or parts of districts where the Bengali year prevails, in or before the month of Pous—of the year preceding that in which the relinquishment is to have effect.

By relinquishment of land by ryot after notice given.

If such ryot has not given such notice and the land is not let to any other person, he shall continue liable for the rent of such land.

If the person entitled to such rent, or his agent, refuses to receive such notice, and to sign a receipt for the same, such ryot may make an application to the Court within the jurisdiction of which the lands or any portion of them are situate, and such Court shall thereupon cause the notice to be served on such person or his agent:

(4)—in the case of a non-transferable holding—by abandonment, when the tenant, having ceased to cultivate the land and having absented himself from the neighbourhood, has failed to pay within fifteen days of any latest day of payment fixed under section 47, any instalment of rent due on such day, and the landlord elects to treat the tenancy as determined:

By abandonment.

Provided that if no rent was really due from the tenant, or if the rent due was tendered by him to the landlord and refused, such tenant shall be entitled to sue such landlord within six months of his taking possession of the holding, for recovery of possession and for damages:

(5)—in the case of a non-transferable holding for which an arrear of rent is due at the end of the Bengali year, or at the end of the month of Jeyt of the Fush or Umli year—by ejectment from the land in respect of which such arrear is due.

By ejectment of ryot for non-payment of rent.

No ryot shall be ejected otherwise than in execution of a decree or order of the Civil Court. The right to eject for non payment of the rent of any one year shall be deemed to have been waived by the receipt of rent for any part of a subsequent year:

(6)—in the case of a farmer or other lease-holder not having a permanent or transferable interest in the land, when an arrear of rent is due and unpaid—by cancelment of the lease and ejectment of the lease-holder.

By ejectment of farmer or lease-holder for non-payment of rent.

No such lease shall be cancelled and no such lease-holder shall be ejected otherwise than in execution of a decree or order of the Civil Court:

(7)—in the case of a ryot not having a right of occupancy or of a tenant for a term holding over after the expiry of his term with the express or implied consent of his landlord—by a notice to quit as provided in section 27:

By notice to quit in certain cases.

Explanation.—The institution of a suit for ejectment is not equivalent to a notice to quit.

(8) in the case of any tenant—by disclaimer when in a suit to which his landlord is a party the tenant disclaims such landlord's title and sets up an adverse title in himself or another by matter in writing or reduced to writing by the Court under the provisions of this Act or of *The Code of Civil Procedure*, and such landlord elects within three months of such disclaimer to treat such disclaimer as a forfeiture of the tenancy, and institutes a suit within such period of three months for the ejectment of the tenant accordingly:

By disclaimer when a tenant disclaims his landlord's title and sets up an adverse title.

provided that no such forfeiture by disclaimer shall be allowed in any case in which such tenant having been let into possession by such landlord can show that such landlord's title had expired or been defeated or annulled at the time at which such disclaimer was made; or, not having been let into possession by such landlord, can show that he admitted his title as landlord under a *bonâ fide* misapprehension or mistake:

Illustration.

B, having taken from A, a proprietor, an ijarah of an estate from the 1st Bysack 1271 to the last day of Cheyt 1288 B S, lets twenty bighas of land, situate in such estate, to C, a ryot, in 1272 and puts C in possession. The term of the ijarah being about to expire, A. in Cheyt 1288 gives notice to C not to pay to B any of the rent for 1289 B. sues C. for the first instalment of the rent of 1289, and C. in this suit denies B.'s title as landlord. B having subsequently obtained from A. a ten years' extension of the ijarah, seeks to eject C. for so denying his title. C., having shown the above facts, is not liable to be ejected.

(9)—when the landlord's estate, tenure or undertenure is sold for arrears of revenue or rent under any law for the time being in force which entitles the purchaser of such estate, tenure or undertenure to avoid a lease or determine a tenancy, and such purchaser elects to avoid such lease or determine such tenancy.

By sale for arrears of revenue or rent when purchaser elects to determine.

Explanation.—When the relation of landlord and tenant exists between two persons in respect of any property, the non-payment of rent for such property by such tenant to such landlord shall not of itself determine such relation.

Mere non-payment of rent does not determine relation of landlord and tenant.

73. When a ryot is ejected in execution of a decree from land upon which there are, at the time of such ejectment, growing crops or other ungathered products of the earth, which such ryot, but for such ejectment, would have been entitled to reap or gather, such ryot shall, notwithstanding such ejectment, be entitled to reap or gather such crops or products, and may use the land for the purpose of tending, reaping, gathering, and removing the same; and in the event of his so doing he shall be liable to pay a reasonable rent for the time during which he uses the land as aforesaid: 80

Ryot ejected from land entitled to the away-going crops and to enter on land to remove them.

provided that the landlord may purchase such crops or products at a fair valuation if, when he applies for execution of his decree, he gives notice of his intention to do so. In any case

Landlord may, if he wishes, purchase such crops or products at a valuation to be made by Court in case of dispute.

in which the landlord and the ryot cannot agree as to such valuation, the Court may, upon the application of either of them, determine the value of such crops or products, and the order so determining such value shall have the force of a decree.

Chapter XI.—Of special provisions for Behar.

Operation of this chapter Lieutenant-Governor may withdraw any district.

74. Notwithstanding any custom of contract to the contrary, the provisions of this chapter shall be in force in Behar, and shall supersede any other provisions of this Act which may be inconsistent with the same.

It shall be lawful for the Lieutenant-Governor of Bengal, by a notification published in the *Calcutta Gazette*, to withdraw any district, or portion of a district, in Behar, from the operation of all or any of the provisions of this chapter; and in the same manner to revoke or modify such notification.

What lands shall be recognized as zeerat lands.

75. The following descriptions of lands shall be recognized as zeerat lands or as the private lands of a proprietor, tenure-holder or undertenure-holder:—

(*a*) Lands which have been declared to be zeerat by a final decree of the Civil Court:

81 (*b*) Lands recognized as zeerat by established village custom:

(*c*) Lands which are proved to have been occupied as zeerat for twelve continuous years immediately before the commencement of this Act, whether such lands have been cultivated by the proprietor, tenure holder, or undertenure-holder, himself or by a tenant.

All other lands in any estate, tenure, or undertenure are 'ryotee lands."

Lieutenant Governor may order survey and register of zeerat lands.

76. The Lieutenant-Governor of Bengal may direct that a survey and register shall be made of the zeerat lands in any district or part of a district of Behar.

Survey how to be made.

77. The survey shall be made by the Collector or by an officer authorized by the Collector in that behalf under such rules as may from time to time be prescribed by the Board of Revenue for the conduct of such survey: and the Collector or such officer may exercise any of the powers conferred upon a Collector by the Bengal Survey Act of 1875, except the powers in Part IV of the said Act, relating to the apportionment and recovery of expenses.

Register how to be made and published.

78. The Collector shall make an accurate register, in such form as the Board of Revenue may from time to time prescribe, of such lands in each village as he may ascertain to be zeerat lands within the meaning of this chapter: and copies of such register shall be published in such manner as the said Board may direct.

Provision for appeals.

79. Any person dissatisfied with any entry in such register may appeal to the Commissioner within one month after such publication: and the Commissioner shall make such enquiry as he may consider necessary, and may direct the register to be amended in such manner as he shall think fit. An appeal shall lie to the Board of Revenue from any order passed by the Commissioner under this section, if preferred within one month from the date of such order.

Register to be submitted to Board of Revenue.

80. If no appeal is preferred, or after such appeals as have been preferred have been disposed of, the Commissioner shall submit to the Board of Revenue a copy of the register, with a report showing how the survey and register have been made: and if the Board are satisfied that the register is correct, they shall transmit the same to the Lieutenant-Governor for his approval.

Mode of approval of register

81. If the Lieutenant-Governor approves such register, he may direct that his approval of the same shall be published by a notification in the *Calcutta Gazette:* provided that such approval shall not in any case be given until after three months from the date of the publication under section 78.

Consequence of publication of approval.

82. From and after the date of such publication in the *Calcutta Gazette*, no evidence shall be received in any Court that any lands not specified in such register are zeerat lands.

Right of occupancy in zeerat lands how limited.

83. A right of occupancy cannot be acquired under the provisions of this Act in zeerat lands: but a right of occupancy in such lands, acquired before the commencement of this Act under any enactment hereby repealed, shall not be lost by the operation of this section.

What persons may not enhance ryots' rent. Exception.

84. No person not having a permanent transferable interest, or an interest not less than a life-interest in the land, shall be entitled to enhance the rent of any ryot except on the ground of land having been added to his holding by alluvion, nor (except on such ground) to maintain any suit for the enhancement of the rent of a ryot.

Lease-holder may not collect arrears.

85. No lease-holder or farmer shall be entitled, in virtue of his lease or farm, to demand from any ryot the payment of any arrears of rent which became due before the date on which such lease or farm took effect.

Lease-holders may not collect rent in excess of amount previously payable. Exception.

86. No lease-holder or farmer shall be entitled, in virtue of his lease or farm, to collect rent from any ryot in excess of the amount annually payable by such ryot during the two years immediately preceding the year in which such lease or farm took effect: except on the ground of land having been added by alluvion to the holding of such ryot.

Suit of contravention of preceding sections to be dismissed with costs and damages.

87. Any suit brought in contravention of the provisions of the three next preceding sections shall be dismissed with costs, and the Court shall award to the defendant the compensation specified in section 97.

84 88. Whenever rent is taken by the division of the produce in kind or by estimate or appraisement of the standing crop, or other procedure of a like nature, requiring the presence both of the ryot and landholder either personally or by agent, if either landholder or ryot, personally or by agent, neglect to attend at the proper time, or if there is a dispute as to the amount or value of the crop,

When rent is payable in kind or in money value of a portion of the crop, landlord or tenant may, in case of dispute, petition Collector to depute an officer. Procedure to be followed thereupon.

an application may be presented by either party to the Collector requesting that a proper officer be deputed to make the division, estimate, or appraisement.

On receiving such application, the Collector shall issue a written notice to the opposite party or his agent to attend on the date and at the place specified in the notice, and shall depute an officer before whom such division, estimate, or appraisement shall be made.

If, on or before the date appointed, the dispute has not been amicably adjusted, three residents of the village shall be appointed assessors—one by each of the parties, and one by the officer deputed to divide the grain or estimate or appraise the crops; and the officer deputed shall decide the amount of rent payable by their award, and shall give to the party applying a written authority to divide the grain or cut the crops:

Provided that if either party fail to attend, the officer deputed shall nominate an assessor on his behalf.

The officer deputed shall report his proceedings to the Collector, who shall determine the amount of costs properly incurred under this section, and the share of the costs to be paid by either party.

85 89. When the rent payable for land is the equivalent money-value of a fixed proportion of the actual gross produce thereof, and such equivalent money-value is determined by an estimate or appraisement (*danabandi*) of the standing crop or by some similar proceeding, the *danabandi* or appraisement papers shall, within fifteen days after the making of the appraisement, be lodged in the office of the Collector of the district.

Danabandi or appraisement papers to be deposited in the Collector's office within fifteen days after the appraisement.

86 90. Every ryot having a right of occupancy shall be entitled to have rent, payable in the manner mentioned in section 88, commuted into an annual money rent payable without direct reference to the crops produced at each harvest, but liable to enhancement under the provisions of this Act. Such annual money rent shall be fixed at the discretion of the Court, either according to the prevailing money rent payable by the same class of ryots for land of a similar description and with similar advantages in the vicinity, or else according to the average value of the landlord's share of the actual gross produce for the preceding five years. In this latter case, a deduction shall be made from such average value in consideration of the whole risk of cultivation being taken by the ryot. Such deduction shall not be less than 25 or more than 50 per cent. of the said average value, and shall ordinarily be 33 per cent.

Ryot entitled to have rent, payable in kind or in equivalent value of share of gross produce, commuted to an annual money rent. Principle upon which such commutation should be made. Procedure for making.

Explanation 1.—Such commutation shall not be deemed to be an alteration of the rate of rent within the meaning of Chapter II.

Explanation 2.—A ryot may not apply, under this section, for the commutation of the rent of less than the whole of such lands as aforesaid occupied by him as one holding.

91. The possession of the growing crops on land of which the rent is payable in the manner mentioned in section 88 is declared to be vested in the tenant, and the landlord shall not be entitled to interfere in any way with the cutting, harvesting, or disposing of such crops, except by an application to the Collector under section 88. Any landlord or other person so interfering shall be deemed to have committed criminal trespass, and shall be subject to the penalties provided for that offence, in addition to any damages which may be awarded against him in a civil suit.

Possession of crops on land of which the rent is payable in kind, declared to be vested in the tenant. Penalty for disturbance.

92. The provisions of the two last preceding sections shall not be deemed to apply to lands duly registered as zeerat lands in the manner hereinbefore provided.

Exception of zeerat lands.

Chapter XII.—Of Damages and Penalties.

93. Every tenant, from whom any sum of money or any portion of the produce of his land is illegally exacted by his landlord in excess of the rent lawfully payable by such tenant, shall be entitled to recover from such landlord such sum so exacted together with damages not exceeding double such sum. 87

Damages for exaction by landlord from tenant of sum in excess of the rent payable.

94. Every tenant, from whom a receipt is withheld for any sum of money paid by him as rent, shall be entitled to recover from the person receiving such rent damages not exceeding double the amount so paid. Every tenant from whom the statement of account described in section 49 (*c*) is withheld, shall be entitled to recover from his landlord damages not exceeding double the aggregate of all sums paid by him to such landlord as rent during the year. 88

Damages recoverable for withholding receipts for rent.

95. If payment of rent, whether the same be legally due or not, is extorted from any tenant by illegal confinement or other duress, such tenant shall be entitled to recover such damages, as may be deemed a reasonable compensation for the injury done him by such extortion. An award of compensation under this section shall not bar or affect any penalty or punishment to which the person practising such extortion may be subject by law. 89

Damages for extorting payment of rent by duress.

96. If in any suit brought for the recovery of arrears of rent, it shall appear to the Court that the defendant has, without reasonable or probable cause, neglected or 90

The Court may award damages not exceeding 25 per cent. on rent not paid without reasonable or probable cause.

refused to pay the amount of rent due by him, or to deposit, before the institution of the suit, such amount in the Collectorate as provided in section 50, it shall be lawful for the Court to award to such plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twenty-five per centum on the amount of rent decreed, as such Court may think fit. Such damages, when awarded, as well as the amount of rent and costs decreed in the suit, shall carry interest at the rate of six per centum per annum from the date of decree until payment or realization thereof.

Explanation.—The Court may not give, in addition to damages, interest before decree upon the rent decreed.

91 **97.** If in any suit brought for the recovery of arrears of rent it shall appear to the Court that the plaintiff has instituted such suit against the defendant without reasonable or probable cause, or that the defendant had duly deposited in the Collectorate, in accordance with the provisions of section 50, the full amount which the Court shall find to have been due to the plaintiff on the date of such deposit, it shall be lawful for such Court, to award to the defendant, by way of compensation, such sum, not exceeding twenty-five per centum on the whole amount claimed by the plaintiff, as such Court may think fit; and such sum, with interest at the rate of six per centum per annum until payment or realization thereof, shall be recoverable from the plaintiff in like manner as sums ordered to be paid by decrees of such Court.

The Court may award compensation not exceeding 25 per cent. on amount claimed to defendant improperly sued for rent.

Chapter XIII.—On Limitation.

92 **98.** Subject to the provisions of section 99, the suits, appeals, and applications specified in the Third Schedule annexed to this Act shall be instituted and made within the time prescribed in such Schedule for each of them respectively; and every such suit or appeal instituted, and application made, after the period of limitation so prescribed shall be dismissed, although limitation has not been pleaded.

Suits and applications in Third Schedule to be instituted; and made within the time there prescribed; otherwise to be dismissed.

93 **99.** The following portions of *The Indian Limitation Act*, 1877, shall apply to the suits, appeals, and applications mentioned in section 98, that is to say —of Part II, the Explanation to section 4 and section 5; and the whole of Part III.

Portions of the Indian Limitation Act applicable to such suits and applications.

94 **100.** When the result of litigation between any persons is such that they stand in the relation of landlord and tenant to each other and have stood in this relation while such litigation was pending, but, until their mutual rights were finally determined by such litigation, such landlord was unable to sue such tenant for rent, the period of limitation for suing for any such rent shall be computed from the termination of such litigation.

Computation of time where, until termination of litigation as to their mutual rights, landlord could not previously have sued tenant for rent.

Chapter XIV.—Of Distraint.

101. The produce of all land in the occupation of a cultivator shall be deemed to be hypothecated for the rent payable in respect thereof, and when an arrear of rent is due from any cultivator, the person entitled to receive rent immediately from such cultivator, instead of suing for the arrear as hereinafter provided, may recover the same by distraint and sale of the produce of the land in respect of which the arrear is due under the rules contained in this chapter.

Arrears of rent may be recovered by distraint under certain rules. Provisos.

Provided always—

(*a*) that when a cultivator has under section 50 of this Act deposited his rent or has given security for the payment thereof, the produce of the land for the rent of which such deposit has been made or security given shall not be liable to distraint;

(*b*) that no sharer in a joint estate, tenure, or undertenure in which a division of land has not been made amongst the sharers, shall apply for an order of distraint otherwise than through a manager authorized to collect the entire rent of the land in respect of which the arrear is claimed;

(*c*) that no proprietor, or manager as defined under the Bengal Land Registration Act, 1876, or mortgagee, to whom arrears of rent are due, shall be entitled to apply for an order of distraint unless his name and the extent of his interest in the land in respect of which such arrears are due shall have been duly registered under the provisions of the said Act.

Explanation.—Subject to the provisions of section 125 cultivator in this chapter includes 'ryots,' and 'under-ryots.'

102. Distraint shall not be made for any arrear which has been due for a period longer than one year before the application for an order of distraint, nor for the recovery of any sum in excess of the rent payable for the same land in the preceding year, unless the rent has been enhanced under a written engagement for the payment of the excess executed by the cultivator or by an order under this Act.

No distraint in certain cases.

103. Standing crops and other ungathered products of the earth or crops or other products when reaped or gathered and deposited in any threshing floor or place for treading out grain or the like, whether on the field or within a homestead or storehouse, may be distrained under the provisions of this Act. But no such crops or products, other than the produce of the land in respect of which an arrear is due or of land held under the same engagement, and no grain or other produce after it has passed out of the possession of the cultivator, and no other property whatsoever, shall be liable to be distrained under this Act.

Standing and gathered crops liable to distraint while in possession of the cultivator.

104. Application for distraint shall be made to the Court having jurisdiction to entertain a suit for the rent of the land in respect of which the application is made. Every such application shall be in writing and be liable to a Court-fee the same in amount as would be payable in a suit instituted for the recovery of the arrears of rent therein claimed, and shall be signed and verified in the manner prescribed by the Code of Civil Procedure for the signing and verification of plaints.

Application for distraint how to be made.

If the application so verified shall contain any averment which the person making the verification shall know or believe to be false, or shall not know or believe to be true, such person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

105. Every such application shall specify the nature and approximate value of the produce to be distrained, and in cases where such produce is of the nature of standing crops or other ungathered products of the earth, such application shall specify the position of the lands upon which such crops or products are situate, by setting forth of boundaries or in such other manner as may suffice for their identification, and the applicant or his duly constituted agent shall at the time of filing such application, or so soon after as the Court may permit, file also in Court such documentary evidence as he may consider necessary for the purposes of such application.

Particulars to be given.

106. The Court may examine the applicant or his duly constituted agent, and if it consider the application inadmissible, it may reject the application or in its discretion permit the applicant to furnish additional evidence in support of such application.

Court may reject application, or call for further evidence.

107. If the application is admitted, the Court shall depute an officer to distrain the crops or other produce of the land in respect of which the arrear is due, and such officer shall proceed to the spot specified in such application and shall distrain the crops and other product accordingly. Notification of such distraint shall be given in accordance with rules to that effect to be hereafter made by the High Court of Judicature at Fort William in Bengal.

Procedure if application is admitted.

108. The distraining officer shall at the time of making such distraint serve the defaulter with a written demand for the arrear due and the costs incurred in making such distraint together with an account exhibiting the grounds on which such distraint is made. The demand and account shall, if practicable, be served personally on the defaulter, but if he abscond or conceal himself or cannot otherwise be found, such officer shall affix the same or a copy of the same on the outer door of the house in which such defaulter usually resides.

Defaulter to be served with written demand and account.

109. Standing crops and other ungathered products may, notwithstanding the distraint, be reaped and gathered by the cultivator, and he may store the same in such granaries or other places as are commonly used by him for the purpose.

Distrained crops may be reaped and stored by cultivator,

110. If the cultivator neglect to do so, the applicant for distraint shall cause the said crops or products when ripe to be reaped or gathered, and in such case shall store the same in such granaries or other places as aforesaid, or some other convenient place in the neighbourhood. In either case the distrained property shall be placed in the charge of the distraining officer or of some other person by him appointed.

or, in his default, by applicant for distraint.

111. If at any time after distraint has been made and prior to the sale of the distrained property, as hereinafter provided, the owner of such distrained property shall deposit in the Court issuing the order of distraint, or in the hands of the distraining officer, the amount specified in the demand served upon such owner, together with all further costs which may have been incurred after the service of such demand, such Court or officer, as the case may be, shall grant a receipt for the same and shall forthwith withdraw the distraint. The distraining officer receiving such deposit shall forthwith pay the same into the Court which issued the order of distraint. The receipt so granted shall afford a full protection to the owner of the distrained property against any subsequent claim for the arrears of rent on account of which such distraint was made.

Owner of distrained property may deposit amount of claim.

112. After the expiration of one month from the date of such deposit being made, the Court shall pay over the same to the applicant for distraint, unless in the meanwhile the owner of the property distrained shall have instituted a civil suit against such applicant as provided in section 121, contesting the legality of the distraint.

Deposit to be paid to applicant for distraint unless owner of distrained property institutes suit to contest distrainer's claim.

113. Unless the demand with all costs of the application for distraint be immediately satisfied, the distraining officer shall issue a proclamation notifying that he will proceed, on a day to be specified in the proclamation, and not being less than three or more than seven days after the time of making the distraint, to sell the distrained property by public auction. Such proclamation shall be stuck up on a conspicuous place in the village in which the land is situated for which arrears of rent are claimed, and shall also specify the particulars of the property distrained, the demand for which it is to be sold, and the place where the sale is to be held.

Sale proclamation to be issued unless demand is satisfied.

114. The sale shall be held at the place where the distrained property is or at the nearest place of public resort, if the distraining officer is of opinion that it is likely to sell there to better advantage.

Place of sale.

115. The property shall be sold by public auction in one or more lots, as the officer holding the sale may think advisable, and if the demand with the costs of distraint and sale be satisfied by the sale

Manner of sale.

of a portion of the property, the distraint shall be immediately withdrawn with respect to the remainder.

Postponement of sale.

116. If on the property being put up for sale a fair price (in the estimation of the officer holding the sale) be not offered for it, and if the owner of the property or some person authorized to act in his behalf apply to have the sale postponed till the next day, or (if a market be held at the place of sale) the next market day, the sale shall be postponed until such day, and shall be then completed whatever price may be offered for the property.

Payment of purchase-money.

117. The price of every lot shall be paid in ready-money at the time of sale or as soon thereafter as the officer holding the sale thinks necessary, and in default of such payment the property shall be put up again and sold.

Certificate to be given to purchaser.

118. When the purchase-money has been paid in full, the officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid.

Proceeds of sale how to be applied.

119. From the proceeds of every sale of distrained property under this Act, the officer holding the sale shall pay to the applicant for distraint the expenses incurred by such applicant on account of such distraint calculated on a scale of charge prescribed by rules hereafter to be made by the Board of Revenue for regulating such charge.

The remainder shall be applied to the discharge of the arrears for which the distress was made with interest thereon up to the day of sale, and the surplus (if any) shall be delivered to the person whose property has been sold.

Selling officer may not purchase.

120. Officers holding sales of property under this Act, and all persons employed by, or subordinate to, such officers, are prohibited from purchasing either directly or indirectly any property sold by such officers.

Person whose property has been distrained may sue for damages

121. Any person whose property has been distrained for the recovery of a demand not justly due or (save as provided in section 123) of a demand due or alleged to be due from some other person, may institute a suit under this Act against the applicant for such distraint, to recover damages for the illegal distress or sale of his property.

Proviso.

Provided that in such suit the burden of proof shall be on such applicant in the same manner as if he had himself instituted a suit for the arrear of rent alleged to be due.

Person illegally distraining or selling property liable to suit for damages, and to penalties for criminal trespass.

122. If any person other than an officer appointed on that behalf by the Court, distrains or sells, or causes to be distrained or sold, any property under colour of this Act, the owner of the property so distrained or sold may institute a suit under this Act to recover damages from such person for any injury which the plaintiff has sustained from the distraint or sale.

And such person shall be said to have committed a criminal trespass and shall be subject to the penalties provided for that offence in addition to any damages which may be awarded against him in such suit.

Crops of defaulter or of his under-ryot may be distrained Proviso.

123. All crops or products declared liable to distraint under this Act shall be liable to distraint whether they belong to the person from whom the arrear of rent is due or to any under-ryot of such person, and no under-ryot (except such under-ryots as are specified in section 125) shall be entitled to institute a suit to recover possession of such crops or products, or for damages for the distraint and sale of the same under this Act.

Provided that the under-ryot may pay to the distraining officer the arrears for which distraint has been made and all costs of and incidental to the making of such distraint, and on receiving such payment the distraining officer shall grant a receipt for the same to such under-ryot, and the receipt so granted shall be a full indemnity against any claim by whomsover made for the recovery of the arrears of rent on account of which such receipt was given.

Amount paid by under-ryot for his lessor may be deducted from his rent.

124. When an under-ryot has made any payment prescribed in the previous section, he shall be entitled to deduct the amount so paid from the rent due by him to the person upon whose default the distraint was made, and the receipt granted by the distraining officer to such under-ryot shall be a full protection against the claim of such defaulter for the recovery of such proportion of the rent deducted by the under-ryot.

Written permission to sub-let is an abandonment of the right to distrain.

125. If any ryot shall have obtained permission in writing from his landlord to sub-let the whole or any part of his holding, the landlord shall be held to have abandoned his right to distrain the crops or other products of any land which may be sub-let in accordance with such permission, and nothing in the two sections immediately preceding shall be held to apply to any under-ryots holding lands under such permission.

In cases of double distraint, claim of superior landlord to be a primary charge.

126. In all cases where the crops or other products, the property of an under-ryot, have been subjected to distraint

by the person entitled, under this Act, to apply for such distraint in respect of arrears of rent due to such person by the lessor of the under-ryot, and

by such lessor in respect of arrears of rent due to him by such under-ryot,

the claim of the person entitled under this Act to apply for distraint in respect of arrears due from such lessor, shall, irrespective of the order in which such distraint was made, be a primary charge upon the proceeds of such distraint.

Lieutenant-Governor may suspend provisions of this Chapter.

127. It shall be lawful for the Lieutenant-Governor by an order published in the *Calcutta Gazette* to suspend the provisions of this Chapter in

any district or part of a district for such time as he may think proper. So long as such order continues in force, no Court shall receive any application for distraint for arrears of rent due on lands situate within a district or part of a district included within such order.

CHAPTER XV.—OF PROCEEDINGS TO ENHANCE THE RENT PAYABLE IN MONEY BY RYOTS HAVING A RIGHT OF OCCUPANCY, OR BY TENURE-HOLDERS OR UNDER-TENURE-HOLDERS.

95 96 **128.** A landlord desiring to enhance the rent of a ryot having a right of occupancy upon any one or more of the grounds specified in section 23, shall present a plaint to the Civil Court or such officer as it appoints in this behalf. Such plaint shall, in order to affect the rent of the following year, be presented (*a*) in districts or parts of districts in which the Fusli or Umli year prevails, in or before the month of Baisakh; or (*b*) in districts or parts of districts in which the Bengali year prevails, in or before the month of Aughan.

Enhancement proceedings to be commenced by plaint. Such plaint when to be filed, if intended to affect the rent of the following year.

129. Such plaint shall set forth the ground or grounds specified in section 23, upon which enhancement is claimed in respect of each holding mentioned therein.

Plaint to set forth the grounds of enhancement.

(1) When enhancement is claimed on the first of such grounds, the plaint shall further state—

Particulars to be given when enhancement is claimed on the *first* ground.

(*a*) the quantity of land held by the ryot, and, when such land consists of different classes, the quantity of each class;

(*b*) the rate of rent actually paid for such land or each class of such land; and

(*c*) the alleged prevailing rate which the plaintiff claims instead of the rate actually paid.

(2) When enhancement is claimed on the second of such grounds, the plaint shall further state—

Particulars to be given when enhancement is claimed on the *second* ground.

(*a*) the quantity of land for which rent was previously paid by the ryot, and, when such land consists of different classes, the quantity of each class;

(*b*) the amount of rent paid for such land and the rate or rates at which such rent was calculated for each class;

(*c*) the quantity of land in excess of that specified under (*a*) for which the plaintiff claims to receive additional rent;

(*d*) the amount of additional rent claimed for the land specified under (*c*); and

(*e*) the total rent claimed, that is to say, the total of (*b*) and (*d*).

(3) When enhancement is claimed on the third of such grounds, the plaint shall further state—

Particulars to be given when enhancement is claimed on the *third* ground.

(*a*) the quantity of land held by the ryot, and, when such land consists of different classes, the quantity of each class;

(*b*) the amount of rent previously paid for such land, and the rate or rates at which such rent was calculated;

(*c*) the cause and extent of the alleged increase in the productive powers of the land; and

(*d*) the enhanced rent or rates of rent which the plaintiff claims to receive in consequence of such increase.

(4) When enhancement is claimed on the fourth of such grounds, the plaint shall further state—

Particulars to be given when enhancement is claimed on the *fourth* ground.

(*a*) The amount of rent previously paid for the land held by the ryot, and the rate or rates at which such rent was calculated;

(*b*) the prices of produce in the locality at the time when the rent was fixed, or at such subsequent time as may be taken for comparison;

(*c*) the increased prices of produce now prevailing in the locality;

(*d*) the enhanced rent, or rates of rent which the plaintiff claims to receive in consequence of such increased prices.

130. (*a*) The Civil Court to which any such plaint has been presented shall proceed to deal therewith in accordance with the provisions of *The Code of Civil Procedure*, and all the proceedings of such Court in the suit so instituted by the presentation of such plaint, shall be governed by the provisions of the said Code. 98

The provisions of *The Code of Civil Procedure* to apply to suits for enhancement brought in the Civil Courts.

(*b*) Such Court shall have full power to decide upon the landlord's right to enhance and upon the fairness of the enhanced rent demanded, and may declare the landlord entitled to such enhanced rent or to any less rent which may be found to be fair and equitable, and shall decide all questions directly raised between the parties so as to avoid, as far as may be possible, a multiplicity of suits. In any case in which the Court decrees enhancement of rent, such enhancement shall take effect from the commencement of the Fusli or Umli or Bengali year following that in which the plaint was presented to the Court.

Civil Court to decide all questions fairly raised between the parties.

Illustrations.

(*a*) *A* sues to enhance the rent of *B*, a ryot having a right of occupancy, on the first of the grounds specified in section 23, alleging that *B* holds 20 bighas of land at one rupee per bigha and pays a rent of Rs. 20; that the prevailing rate, payable by the class of ryots to which *B* belongs for land of a similar description and with similar advantages in the vicinity, is one rupee and eight annas per bigha; and therefore that *B's* rent should be enhanced to Rs. 30. *B* pleads that he holds 15 bighas only, and denies that such prevailing rate is more than the one rupee per bigha which he pays. *A* fails to prove that the prevailing rate is one rupee and eight annas. The Court shall nevertheless decide whether *B* holds 15 or 20 bighas, and whether his rent is Rs. 15 or Rs 20.

(*b*) *A* sues to enhance the rent of *B*, a ryot having a right of occupancy, on the second of the grounds specified in section 23, alleging that *B* previously held ten bighas of land at one rupee and eight annas per bigha, that eight more bighas have been recently added by alluvion to *B's* holding; and that *B* should pay a rent of Rs. 27 instead of Rs 15 which he previously paid. *B* denies that any land has been added to his holding by alluvion, and alleges that he previously held not ten, but fifteen bighas, and that the rate of rent was one rupee, not one rupee and eight annas. There is no satisfactory evidence of alluvion. The Court shall nevertheless try whether *B* previously held ten or fifteen bighas, and whether the rate of rent was one rupee or one rupee and eight annas.

(*c*) *A* sues to enhance the rent of *B*, a ryot having a right of occupancy, on the ground that the productive powers of the land held by *B* have increased otherwise than by the agency or at the expense of *B* in consequence of the construction by Government of a canal which has drained and improved *B's* land. *B* denies that the productive powers of his land have increased, and alleges that his land is not liable to enhancement as it is held at a rate which has not been changed since the time of the Permanent Settlement. *A* fails to prove the alleged increase of the productive powers of the land. The Court shall nevertheless try whether *B's* land is held at a rate of rent which has not been changed since the time of the Permanent Settlement, and so is protected from enhancement.

(*d*) *A* sues to enhance the rent of *B*, a ryot having a right of occupancy, on the fourth of the grounds specified in section 23, alleging that *B's* previous rent was fixed in 1870 at Rs. 20, and that in 1875 the price of paddy in the locality was one rupee per maund; that the present price of paddy in the locality is one rupee eight annas, and that therefore *B* should pay a rent of Rs. 30. B denies that the price of paddy was one rupee per maund in 1875, and alleges that he holds under a written lease for a term of 30 years from 1870, which has not expired; and that a rent of Rs. 30 would amount to more than one-fourth of the average annual value of the gross produce of the land of his holding. *A* fails to prove the alleged increase of price. The Court shall nevertheless try whether *B* holds under a written lease for a term which has not expired. But it shall not be necessary for the Court to try whether a rental of Rs. 30 would amount to more than one-fourth of the average annual value of the gross produce of *B's* holding.

Of the Preparation of a Table of Rates.

Lieutenant-Governor may direct preparation of a Table of Rates.

131. It shall be lawful for the Lieutenant-Governor to direct, by an order to be published in the *Calcutta Gazette*, that for any district, or subdivision of a district, or pergunnah, or other local area, the Collector shall prepare a Table of Rates, showing the rates of rent equitably payable by ryots having a right of occupancy for each class of lands specified in the said Table.

Assessors to be appointed.

132. In the preparation of the said Table the Collector shall be assisted by such assessors as the Lieutenant-Governor shall appoint in that behalf.

What particulars to be given in the Table.

133. Every such Table of Rates shall specify the following particulars, namely: —

(1) The several classes of land ordinarily recognized in the said district or other local area as bearing different rates of rent in consequence of the different productive powers of the lands.

(2) The rates of rent now ordinarily paid by ryots having a right of occupancy for each of such classes of land.

(3) The rates which the Collector may find to be equitably payable by such ryots for each of such classes.

(4) If the Collector finds a higher rate to be equitably payable for any class of land than the rate now ordinarily paid, the grounds upon which such higher rate is found to be payable.

(5) The amount of the gross produce of the land of each class, and the average value thereof, calculated in accordance with the provisions of clause (*c*) of section 21.

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Board of Revenue may prescribe rules.

134. In the preparation of the Table of Rates, the Collector shall be guided by the provisions of this Act and by such rules as the Board of Revenue shall prescribe in that behalf.

131

Collector may exercise powers of Civil Court

135. The Collector may at any stage of his proceedings exercise any of the powers of a Civil Court in respect of summoning, causing the attendance of, and examining witnesses, and in respect of causing the production of documents: and the provisions of *The Code of Civil Procedure* applicable to these matters shall apply to a Collector exercising such powers.

What standard to be used.

136. The particulars in the Table of Rates shall be given for the Government standard bigha of 14,400 square feet. If any different local measure prevails in the area covered by the said Table, the particulars shall also be given for such local measure.

Local publication of the Table.

137. When the Collector shall have prepared the Table as aforesaid, he shall publish the same within the local area affected thereby, in such manner as the Board of Revenue shall direct.

Collector to deal with objections.

138. Any person objecting to any entry in the Table of Rates shall be at liberty to petition the Collector within one month after such publication; and the Collector with the aid of the assessors shall proceed to consider any such objection, and may alter or amend the Table of Rates prepared by him.

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Table to be submitted to superior Revenue authorities

139. If no objections shall be made within one month, or after such objections as may be made shall have been disposed of, the Collector shall submit the Table of Rates, together with his proceedings, and any petitions of objection which may have been presented, to the Commissioner of the Division, or through the Commissioner of the Division to the Board of Revenue for approval. The Lieutenant-Governor may, from time to time, by an order which shall be published in the *Calcutta Gazette*, direct what cases shall be finally submitted to the Board of Revenue or to the Commissioner.

104

Proceedings of such authorities thereupon.

140. The Board of Revenue or the Commissioner, as the case may be, shall have full power to revise, amend, or alter in any manner which appears proper, the Table of Rates so submitted, and may allow in whole or in part any objection forwarded therewith or subsequently made, or may return the case for further enquiry. If the Lieutenant-Governor shall have directed that a case shall be finally submitted to the Commissioner, the Board of Revenue may nevertheless call for the proceedings, and may hear, but shall not be bound to hear, any person affected thereby, and may pass such orders as shall appear proper.

Publication of Table after final sanction.

141. When a Table of Rates has been finally sanctioned by the Board or the Commissioner, it shall be submitted to the Lieutenant-Governor, who may direct, if he thinks fit, that such Table shall be published in the *Calcutta Gazette* with a specification of the local area to which it applies.

142. Notwithstanding anything contained in section 23, such publication shall be conclusive evidence in any Civil Court on the following matters in any suit brought under this Act:—

Consequences of such publication.

(1) that the proceedings for the preparation of the Table have been duly conducted in accordance with this Act:

(2) that the rates shown in such Table for each class of land are the fair and equitable rates, within the meaning of clause (*d*) of section 21, payable for such land by ryots having rights of occupancy within the local area to which the Table applies:

(3) that the gross produce of the land, and the average value thereof, within the meaning of clause (*c*) of section 24, are in accordance with the gross produce and value specified in the said Table.

Provided that in any suit brought as above, it shall be competent to any such ryot to plead that he is entitled by custom or contract or especial equitable considerations to hold at lower or more favourable rates.

Proviso.

105 **143.** A Table of Rates published as aforesaid shall have effect for a period of ten years from the date of such publication, and thereafter until a fresh Table for the said area shall be published in a similar manner: and no ryot having a right of occupancy, whose rent may have been enhanced in accordance with the rates shown in the said Table as the rates equitably payable, shall be liable to pay any further enhancement on the first, third, or fourth of the grounds specified in section 23, until the publication of a fresh Table of Rates as aforesaid, or until a period of ten years has elapsed since his rent was so enhanced.

Table to be in force for ten years.

106 **144.** Subject to the provisions of section 129, any landlord may enforce the Table of Rates against any ryot having a right of occupancy by suit in the Civil Court.

Table of Rates may be enforced by suit.

Preparation of Price Lists.

122 **145** (*a*) The Collector of every district shall prepare annual lists of the prices, at harvest time, of the staple crops mentioned in clause (*c*) of section 24. Such price lists shall be prepared in accordance with such general directions as may from time to time be prescribed by the Board of Revenue, and shall, when prepared, be submitted to the said Board for approval or revision.

Collectors to prepare annual price lists of staple crops under general directions of Board of Revenue—to submit such price lists to Board for approval or revision.

(*b*) Such price lists for all districts and areas mentioned in the said clause (*c* of section 24 shall, when approved or revised by the Board of Revenue, be published annually in the *Calcutta Gazette* under the signature of one of the Secretaries to the said Board. Any such price list so published shall be relevant in any proceedings under this chapter, and shall be *prima facie* evidence of the price of such staple crops during the year and in the district or area for which it has been published as aforesaid.

Price lists, when approved or revised by Board, to be published in *Calcutta Gazette* and to be *prima facie* evidence of prices of staple crops.

Proceedings to enhance the Rent payable in Money by Tenure-holders and Undertenure-holders.

146. In the following cases, that is to say— *132*

(*a*) in the case of a proprietor claiming to enhance the rent of a tenure-holder whose interest is immediately subordinate to that of such proprietor;

Landlord desiring to enhance rent of tenure or undertenure to proceed in Civil Court.

(*b*) in the case of a tenure-holder claiming to enhance the rent of an undertenure-holder whose interest is immediately subordinate to that of such tenure-holder;

(*c*) in the case of a superior undertenure-holder claiming to enhance the rent of an under-tenure-holder whose interest is immediately subordinate to that of such superior undertenure-holder;

(*d*) in the case of a landlord claiming under the provisions of section 18 to enhance the rent of a ryot entitled to hold land at fixed rates;

(*e*) in the case of a landlord claiming under the provisions of section 33 to enhance the rent of such land as is specified in section 32;

such proprietor or tenure-holder or superior undertenure-holder or landlord shall present a plaint to the Civil Court or such officer as it appoints in this behalf. Such plaint shall in order to affect the rent of the following year, be presented (*a*) in districts or parts of districts in which the Fusli or Umli year prevails, in or before the month of Baisakh; or (*b*) in districts or parts of districts in which the Bengali year prevails, in or before the month of Aughan. The provisions of section 180 shall be applicable to every such plaint so presented to a Civil Court.

Plaint when to be presented in order to affect rent of following year.

CHAPTER XVI.—OF THE RECOVERY OF ARREARS OF RENT IN CERTAIN CASES BY SUMMARY SALE WITHOUT DECREE.

147. Subject to the provisions of section 62, and to the other provisions of this Chapter, proprietors of revenue paying estates are entitled to apply in the manner hereinafter provided, for periodical sales of tenures of the following kinds, namely— *133*

Proprietors entitled to apply for summary sale of certain tenures.

(*a*) *patni* tenures;

(*b*) tenures in which the right of selling for an arrear of rent has been expressly reserved by stipulation in the engagements interchanged on the creation of such tenures;

(*c*) permanent tenures of which the annual rent is not less than fifty rupees.

The exercise of this power is not confined to cases in which the stipulation for sale may have been unrestricted in regard to time, but applies equally to tenures held under engagements stipulating merely for a sale at the end of the year.

148. It shall be lawful for the Lieutenant-Governor, if he shall think fit, to declare that the provisions of this Chapter shall

Summary sale of occupancy holdings in certain cases.

apply to the occupancy holdings of which the rent is payable directly to any landlord specified in such declaration. Such declaration may be made on the recommendation of the Board of Revenue, if the Board shall be satisfied that such landlord maintains a proper system of zemindary accounts, and of the registration of occupancy holdings, and that the receipts and statements of account specified in section 49 are duly and regularly given by such landlord. So long as such declaration is in force and no longer, the provisions of this chapter relating to the summary sale of tenures shall apply, so far as they are relevant, to the sales of occupancy holdings of which the rent is payable directly to such landlord. The Lieutenant-Governor may at any time cancel or withdraw such declaration.

134 **149.** (*a*) On the first day of Baisakh, that is, at the commencement of the following year from that of which the rent is due, any such proprietor as is mentioned in section 147 may present a petition to the Collector containing a specification of any balances that may be due to him on account of the expired year from all or any holders of tenures of the nature described in section 147:

First sale may be applied for on first Baisakh.

Provided that if the first of Baisakh fall on a Sunday or holiday, the petition may be presented on the first day following upon which the Collector's office is open: and also that the petition may be presented on any day after the first of the month, with the leave of the Collector, and on reasons to the Collector's satisfaction being assigned for the delay:

Provided also, that if the rent of the tenure be payable according to instalments the last of which falls due upon the first day of Cheit, the petition may be presented on any day after the first day of Cheit.

(*b*) Such specification of the balances due shall then be stuck up in some conspicuous part of the Collector's kachahri, with a notice that, if the amounts claimed be not paid before the first of Jeyt following, the tenures of the defaulters will on that day be sold by public sale in liquidation. If the first of Jeyt fall on a Sunday or holiday, the next subsequent day not a holiday shall be selected instead.

Specification of balances due to be stuck up at Collector's kachahri, with notice of sale in default of payment.

(*c*) A similar notice shall be stuck up at the sadr kachahri of the proprietor himself, and a copy or extract of such part of the notice as applies to the individual case shall be by him sent to be similarly published at the kachahri at which the business of the tenure is transacted, or at the principal town or village upon the land of the tenure of the defaulter. The proprietor shall be exclusively answerable for the observance of the forms above prescribed.

Similar notice to be stuck up at proprietor's sadr kachahri, and a further notice to be published on the land.

Explanation.—The notice and copy referred to in this clause may be stuck up and published at any time after the date on which the petition might be presented under clause (*a*), whether the notice referred to in clause (*b*) shall have been stuck up in the Collector's kachahri or not.

(*d*) The copy or extract of such part of the notice as applies to the individual case shall be served on the defaulter by a single peon deputed by the proprietor, who shall bring back the receipt of the defaulter or of his manager for the same, or, in the event of inability to procure this, the signatures of three substantial persons residing in the neighbourhood, in attestation of the notice having been brought and published on the spot.

Service and attestation of service of notice directed to be published on the land.

If the people of the village object or refuse to sign their names in attestation, the peon shall go to the kachahri of the nearest Munsif, or if there is no Munsif, to the nearest thana, and there make voluntary oath of the same having been duly published, a certificate to which effect shall be signed and sealed by the said officers and delivered to the peon.

Explanation.—Service upon the defaulter personally of the copy or extract of such part of the notice as applies to the individual case is not a sufficient substitute for publication at the kachahri or at the principal town or village upon the land of the tenure.

(*e*) If it shall appear from the tenour of the receipt or attestation in question that the notice has been published at any time previous to the fifteenth of the month of Baisakh, it shall be a sufficient warrant for the sale to proceed upon the day appointed.

135 **150.** On the first day of Kartik in the middle of the year the proprietor shall be at liberty to present a similar petition to the Collector with a statement of any balances that may be due on account of the rent of the current year up to the end of the month of Asin, and to cause similar publication to be made of a sale of the tenures of defaulters to take place on the first of Aughan, unless the whole of the advertized balance shall be paid before the date in question, or so much of it as shall reduce the arrear, including any intermediate demand for the month of Kartik, to less than one-fourth or a four-anna proportion of the total demand of the proprietor according to the kistbandi, calculated from the commencement of the year to the last day of Kartik

Second or mid-year sale may be applied for on first Kartik.

Sale to take place if arrear to date equal one-fourth or more of the annual rent.

The provisos appended to clause (*a*) of section 149 shall be applicable, *mutatis mutandis*, to petitions presented under this section.

151. The dates prescribed in sections 149 and 150 shall be taken to apply to districts or parts of districts in which the Bengali year prevails. For districts or parts of districts in which the Fusli or Umli year prevails, the first day of Baisakh shall be taken to be equivalent to the first day of the first month of the year, and the first day of Kartik shall be taken to be equivalent to the first day of the seventh month of the year.

Rules regarding dates how to be interpreted.

152. (*a*) If the balance claimed by the proprietor on account of the rent of the tenure together with interest and all charges incurred in bringing the tenure to sale remains unpaid at sunset of the day next preceding the day fixed for the sale of such tenure as hereinbefore provided, the sale shall be made without reserve,

Sale not to be stayed unless arrear claimed be lodged.

in the manner provided in sections 157 and 158. Save as provided in section 153 and in section 155, such sale shall not be stayed or postponed on any account unless the amount of the demand, together with interest and the charges incurred, has been paid or lodged before sunset of the day next preceding the day of sale as aforesaid.

Explanation.—The balance claimed by the proprietor may be paid to such proprietor or to his agent having authority to receive it, or may, subject to the rules for the receipt of money in Government Treasuries, be lodged in the Treasury of the Collector having jurisdiction under the provisions of section 163.

But suit will lie for its reversal.

(*b*) It shall, however, be competent to any party desirous of contesting the right of the proprietor to make the sale, whether on the ground of there having been no balance due or on any other ground, to sue such proprietor for the reversal of the same, and upon establishing a sufficient plea to obtain a decree with full costs and damages.

Purchaser to be made party to such suit.

(*c*) The purchaser shall be made a party to any such suit, and, upon making a decree for reversal of the sale, the Court shall be careful to indemnify him against all loss at the charge of the proprietor or person at whose instance the sale may have been made.

Illustrations.

In the following cases a sufficient plea is established:—

(*a*)—*A*, a *patnidar*, sues for the reversal of the sale of his *patni* tenure on the allegation that no notice was stuck up in a conspicuous part of the Collector's kachahri, as required by clause (*b*) of section 149, and this allegation is found to be true.

(*b*)—*A*, *B*, and *C*, joint owners of a *patni* tenure, sue for the reversal of the sale of such *patni* tenure on the allegation that no copy or extract of the notice was published at the kachahari or at the principal town or village upon the land as required by clause (*c*) of section 149. This allegation is found to be strictly true, although it appears that a copy of the notice was served on *A* and *B* personally.

In the following case a sufficient plea is not established:—

(*c*)—*A*, a *patnidar*, sues for the reversal of the sale of his *patni* tenure on the ground that no copy or extract of the notice was published at the kachahri or at the principal town or village upon the land, as required by clause (*c*) of section 149. It is found that the copy or extract of the notice was published in the manner required by this clause; but that the peon did not bring back the receipt of the defaulter, or of his manager, or of three substantial persons residing in the neighbourhood as required by clause (*d*) of the same section, nor did he, as required by the same rule, make a voluntary oath before the nearest Munsif, or at the nearest thana, that the copy or extract had been duly published.

137 **153.** (*a*) In any case in which a tenure-holder contests the proprietor's demand of an arrear as specified in the notice advertised, such tenure-holder shall be competent to apply for a summary investigation at any time within the period of notice. The proprietor shall then be called upon to furnish his kabuliyat and other proofs at the shortest convenient notice, in order that the award may, if possible, be made before the day appointed for sale.

Defaulter may apply for summary investigation before sale.

But sale not to be stayed, unless amount of rent claimed be deposited.

(*b*) Such award, if so made, will of course regulate the ulterior process; but if the case be still pending, the lot shall be called up in its turn notwithstanding the suit; and, if the proprietor or his agent in attendance insists on the demand, the sale shall be made on his responsibility, nor shall it be stayed or the summary suit be allowed to proceed, unless the amount claimed or its equivalent in Government securities be then lodged or has been previously lodged, by the tenure-holder contesting the demand; and if such deposit be not made the alleged defaulter shall have no remedy but by a regular action for damages, and for a reversal of the sale.

Omission to ask for investigation not to preclude action.

(*c*) The omission to apply for a summary investigation under this section shall not preclude the tenure-holder from bringing such regular action.

If decision against proprietor be reversed on appeal, demand may be included in next half-yearly balance.

154. If, on such summary investigation, the Collector decide against the proprietor, and such decision be afterwards reversed on appeal to the superior Revenue authorities, the proprietors shall be at liberty to include, in the specification of balances for the half-year next following such reversal, the amount of the demand so contested under section 153.

138 **155.** In order to give undertenure-holders of the first degree an opportunity of protecting themselves against damage by the avoidance of their undertenures upon the sale of the tenure, the following rules have been enacted:—

Undertenure-holders enabled to protect themselves from avoidance of their undertenures upon sale of the tenure.

(1) Any one or more of such undertenure-holders may, when the tenure is advertised for sale, pay into the Collectorate Treasury or to the officers conducting the sale the amount for the realization of which the tenure is about to be sold; and, on such payment being made, the sale shall be stayed.

by paying in the amount for which the tenure is about to be sold.

(2) Any one or more of such undertenure-holders may lodge money antecedently for the purpose of eventually answering any demand that may remain due on the day fixed for the sale of the tenure; and, should the amount lodged be sufficient, the sale shall not proceed, but after making good to the proprietor the amount of his demand, any excess shall be paid back to the person who lodged it.

or by lodging money antecedently to meet arrears.

139 **156.** (*a*) In any case in which an undertenure-holder has paid money under section 155 in order to protect his undertenure, if the amount so lodged be wholly or partly rent due by such undertenure-holder to the holder of the tenure about to be sold, the same shall be stated at the time of making the deposit, and amount or so much thereof as may be necessary shall be carried to the account of the tenant lodging it in satisfaction of any claim of rent that may at the time be pending, or be thereafter brought forward against him by the proprietor of the advertised tenure on account of the year or months for which the notice of sale may have been published.

Procedure if amount lodged be rent due from under-tenant.

(*b*) If the person making such a deposit in order to stay the sale of the tenure shall have already paid the whole or part of the rent due from himself, so that the amount lodged is wholly or partly an advance from private funds and not a disbursement on account of the said rent, such deposit or the balance which remains after satisfying any claims to rent under clause (*a*) shall not be carried to credit in, or set against, future demands for rent, but shall be considered as a loan made to the holder of the tenure preserved from sale by such means, and the tenure so preserved shall be the security to the person making the advance, who shall be considered to have a lien thereupon in the same manner as if the loan had been a first mortgage upon the tenure; and he shall be entitled, on applying for the same, to obtain immediate possession of such tenure in order to recover the amount so advanced from any profits belonging thereto.

Procedure if amount lodged be an advance from private funds.

Explanation.—When an advance is made under this clause, any pre-existing first mortgage on the tenure shall be held to have the effect of a second mortgage, and so on in order.

(*c*) If the defaulting tenure-holder shall desire to recover his tenure from the hands of the person who, by making the advance, has acquired such an interest therein and entered on possession in consequence, he shall not be entitled to do so, except upon repayment of the entire sum advanced with interest at the rate of twelve per centum per annum up to the date of possession having been given as above, or upon exhibiting proof in a regular suit to be instituted for the purpose, that the full amount so advanced with interest has been realized from the usufruct of the tenure.

Defaulting tenure-holder must pay total sum advanced with interest, if he wants to recover his tenure

140 **157.** (*a*) At the time of the sale the notice previously stuck up in the kachahri shall be taken down, and the lots shall be called up successively in the order in which they may be found in that notice. A person shall attend on the part of the proprietor with a particular statement of the payments made up to the day of sale on account of the balance of each advertised lot, together with the receipt or certificate mentioned in clause (*d*) of section 149. No lot shall be put up to sale until the statement produced shall have been inspected, and the existence of a balance for the year ascertained therefrom, nor until the receipt for the notice shall have been read, the observance of which forms shall be recorded in a separate proceeding to be held upon each lot sold.

Lots to be sold in order. Proprietor's agent to be present with account and receipt for notice

(*b*) If the sale be of the description provided for in section 150, the kistbandi of the defaulter shall likewise be produced in order that it may be seen that the balance remaining unpaid exceeds a four-anna proportion of the demand up to the date of sale; nor shall the sale take place unless this be ascertained.

Kistbandi to be produced at second or mid-year sale.

(*c*) The proprietor shall be exclusively responsible for the correctness and authenticity of the papers to be thus exhibited, nor shall the Collector or other officer making the sale be answerable in any respect except for its fairness and publicity, and for the observance of the rules prescribed for his guidance in this chapter.

Proprietor exclusively responsible for correctness of papers, &c

141 **158.** (*a*) The sale shall be conducted in public by the Collector of Land Revenue [having jurisdiction as provided in section 163]. The tenure shall be sold to the highest bidder, and every one not the actual defaulter shall be free to bid, not excepting the person in satisfaction of whose demand the sale may be made, nor the under-tenants of the defaulter. Fifteen per cent. of the purchase-money shall be paid as soon as the lot is knocked down, and the officer conducting the sale shall be competent to refuse to accept a bid or to knock down a lot to any bidder, unless he has assurance to his satisfaction that the amount required to be deposited is in hand for the purpose, or will be produced within two hours.

Sale to be held by Collector in public kachahri; procedure to be observed at sale.

(*b*) If the fifteen per cent. be not paid, or an equivalent amount in Government securities be not lodged within two hours of the sale, the lot shall be re-sold on the same day; and if the remainder of the purchase-money be not paid by noon of the eighth day, notice shall be given of re-sale on the following day, that is, on the ninth from the first sale, by proclaiming the same by beat of drum through the bazar of the sadr station of the district, after which the lot shall be re-sold at the appointed time at the risk of the first purchaser, who shall forfeit the advance of fifteen per centum already made, and be further answerable for any sum in which the proceeds of the second sale may fall short of the antecedent one. Such deficiency shall be levied by the process for the execution of decrees of the Civil Courts.

Re-sale if 15 per cent. not deposited, &c.: or if remainder of purchase-money not paid Deposit forfeited in latter case.

(*c*) The forfeited deposit of fifteen per centum shall be applied to defray the expenses of the sale, and the surplus shall be credited to Government.

Forfeited deposit how applied.

142 **159.** (*a*) Every tenure that may be disposed of at a public sale under the rules contained in sections 147 to 158 inclusive for arrears of rent due on account of the same, is hereby declared to be sold free of all incumbrances that may have accrued upon it by the act of the defaulting proprietor, his representatives, or assignees, unless the right of making such incumbrances was expressly vested in the holder by a stipulation to that effect in the written engagements under which the said tenure was held.

Tenure declared to be sold free of incumbrances created by act of defaulter.

(*b*) No transfer by sale, gift, or otherwise, no mortgage or other limited assignment, shall be permitted to bar the indefeasible right of the proprietor to hold the tenure of his creation answerable, in the state which he created it, for the rent, which is in fact his reserved property in the tenure, except such transfer or assignment has been made with a condition to that effect under express authority obtained from such proprietor.

No transfer, mortgage, &c, valid against proprietor unless he have consented thereto.

(*c*) In like manner, upon the sale of a tenure for arrears, all leases originating with the former tenure-holder, if creative of a middle interest between the ryots and such tenure-holder, must be considered to be cancelled, except the authority to grant them have been specially transferred. The possessors of such interests must consequently lose the right to hold possession of the land and to collect the rents of the ryots, this having been enjoyed merely in consequence of the defaulter's assignment of a certain portion of his own interest, the whole of which was liable for the rent:—

All leases granted by defaulter are cancelled by sale.

Provided that nothing contained in this section shall be construed to entitle the purchaser of a tenure to eject any ryot having a right of occupancy or to cancel *bonâ fide* engagements made with such tenants by the late incumbent or his representative, except it be proved in a regular suit to be brought by such purchaser for the adjustment of his rent, that a higher rate would have been demandable at the time such engagements were contracted by his predecessor. Subject to these provisions any such purchaser shall be entitled to proceed under the provisions of this Act to enhance the rent of the ryots holding land in the tenure purchased by him, but no ryot shall be liable to ejectment otherwise than as provided in this Act.

Exception in favour of *bonâ fide* engagements with ryots.

160. (*a*) The purchaser, as soon as he has paid the full amount of the purchase-money, shall receive from the officer conducting the sale a certificate of such payment.

Certificate to be given to purchaser on payment of full amount of purchase-money.

143 (*b*) Such purchaser shall then proceed with such certificate to procure a transfer of the tenure to his name in the kachahri of the proprietor, and upon furnishing security, if required, to the extent of half the annual rent, he shall receive the usual order for possession, together with a notice to the ryots and others to attend and pay their rents henceforward to him.

Zemindar bound to put him in possession

(*c*) The proprietor shall also be bound to furnish access to any papers connected with the tenure purchased that may be forthcoming in his kachahri, and should he in any manner delay the transfer in his office or refuse to give the orders for possession, notwithstanding that good and substantial security shall have been furnished or tendered on requisition, the new purchaser shall be entitled to apply direct to the Collector, and he shall receive an order for possession, and shall be put in possession of the land by an officer deputed by the Collector for that purpose in the same manner as possession is obtained under a decree of court: provided, however, that if the delay be on account of the proprietor contesting the sufficiency of the security tendered, the rule contained in clause (*c*) of section 45 shall be observed.

Purchaser's remedy if zemindar refuse or delay to put him in possession.

(*d*) The former tenure-holder shall also be bound to furnish the new purchaser with a jummabandi of the rents payable by the undertenure-holders or ryots: and if he fail to furnish such jummabandi when called upon to do so, the purchaser may institute a suit under this Act to recover damages from such former tenure-holder

Former tenure-holder must furnish jummabandi.

161. (*a*). When the new purchaser proceeds to take possession of the lands of his purchase, if the late incumbent himself or the holders of undertenures or assignments derived from such late incumbent, and intermediate between him and the ryots, attempt to offer opposition or to interfere with the collections of such new purchaser from the lands composing his purchase, the latter shall be at liberty to apply immediately to the Collector for the aid of the public officers in obtaining possession of his just rights. *144*

Procedure in case of opposition to purchaser by defaulter or persons claiming under him.

(*b*) A proclamation shall then issue under the seal and signature of the Collector declaring that the new incumbent having by purchase at a sale for arrears of rent due to the proprietor, acquired the entire rights and privileges attaching to the tenure of the late tenure-holder in the state in which it was originally derived by him from the proprietor, he alone will be recognized as entitled to collect the rents from the ryots and others, and no payments made to any other individual will on any account be credited to such ryots or other tenants in any suit for rent or on any other occasion whatever when the same may be pleaded.

Collector to issue proclamation.

(*c*) If the late incumbent or his late tenants continue to oppose the entry of the new purchaser, notwitstanding the issuing of such a proclamation, or if there is reason to apprehend a breach of the peace on the part of any one, the aid of the police officers shall be given to the new purchaser on his presenting a written application for the same; and in the event of any affray or breach of the peace occurring, the entire responsibility shall rest with the party opposing the lawful attempt of the purchaser to assume his rights.

Procedure in case of continued opposition by defaulter or his undertenants.

162. The following rules shall be observed in disposing of the proceeds of the sale, that is to say— *145*

Rules for disposal of the sale-proceeds.

(1) One per centum shall first be deducted from the net proceeds realized and shall be carried to the account of Government, for the purpose of meeting the expense of any extra establishments which it may be necessary to maintain for carrying into effect the provisions contained in sections 147 to 161 inclusive.

One per cent. to be credited to Government.

(2) The balance on account of which the sale may have been made shall next be made good in full (with interest and all charges incurred in bringing the tenure to sale) to the proprietor or other person to whom the same may be due: provided, however, that no former balances beyond those of the current year (or of that immediately expired, if the sale be at the commencement of the following year), except such balances as are referred to in section 154, shall be included in the demand to be thus satisfied. Such antecedent balances other than those referred to in section 154, if the proprietor have omitted to recover them by summary sale at the time, shall be regarded as personal debts of the individual tenure-holder, and can be recovered

Zemindar's claim for rent to be next satisfied: proviso.

only in the same manner as other debts by a regular suit in Court.

Balance to be sent to Government Treasury to meet claims of persons endamaged by sale.

(3) Any excess that may remain after satisfying the demand of the proprietor shall be sent by the officer conducting the sale to the Government Treasury, to be held in deposit to answer the claims of the under tenure-holders of the first degree, or of others who by assignment of the defaulter may be at the time in possession of a valuable interest in the land composing the tenure sold, or any part of it.

Under tenure holders free to sue for price of their interest or compensation.

(4) It shall be competent to any one conceiving himself to possess such an interest as is mentioned in clause 3, to bring forward his claim to the price he may have paid for the same, or for a just compensation for the loss sustained by him in consequence of the sale, by instituting a regular suit.

Award of Court if plaintiff's claim found equitable.

(5) If the Court on investigation considers the plaintiff's claim to be an equitable one, the Court shall award to the claimant either the price he may have originally paid, or the value of the interest at the time of sale, or any other amount that may be deemed just and equitable under all the circumstances. If there be more claimants than one, payment shall not be made from the deposit until the whole of the claims be settled; and in case the value assessed upon the whole should exceed the amount in deposit, such amount shall be divided proportionately, and the remainder stand as a personal debt against the defaulter, to be realized from him by the usual process for the execution of decrees.

Suit not to lie if under-tenure holder be himself in arrear at time of sale.

(6) No under tenure-holder of the first degree or other possessor of an assigned interest upon the land of the tenure sold, who may be holding under a stipulation for the payment of an annual amount in the way of rent, shall be entitled to recover compensation for the loss of such under-tenure or assignment upon its becoming cancelled by sale of the tenure, except after exhibiting proof that the whole amount of the rent demandable from himself has been paid or lodged for the purpose before the sale.

Defaulter entitled to sale-proceeds if no claims, or after claims have been satisfied.

(7) If no claims upon the balance of the sale-proceeds are brought forward by any under-tenants or assignees within the period of two months from the date of sale, or if the amount claimed by those who may have sued do not equal the entire deposit, the defaulter whose tenure may have been sold shall be at liberty to petition the Court for the amount so held in deposit or for the excess thereof, as the case may be, and he shall receive a certificate under the seal of the Court of there being no claims to afford ground of detention for the whole or any part of the deposit, and, upon exhibiting such certificate to the Collector, the amount set free thereby shall be paid to his receipt. In the same manner, upon executing a decree passed in favour of any under-tenants or assignees, they shall receive certificates under the seal of the Court, declaring the amount adjudged to them out of the deposit; and upon exhibiting these certificates, the amount shall be paid severally to their receipts by the Collector.

Substitution of Government securities for cash in deposit.

(8) It shall be competent to any party interested in a deposit to withdraw the whole or any part thereof, on substituting Government securities bearing interest in lieu of the money so held in deposit. Such securities shall be taken at the rate of discount or premium of the day, as shown by the *Government Gazette* last received.

Rules for the exercise of jurisdiction in summary sales by the Revenue authorities.

163. The exercise of jurisdiction by the Revenue authorities under sections 147 to 162 inclusive shall be regulated by the following rules:— *146.*

(1) Unless the Board of Revenue shall otherwise direct, the Collector of the district upon the revenue-roll of which the estate to which the tenure is subordinate is borne, shall conduct the sale and otherwise exercise jurisdiction.

(2) It shall be lawful for the Board of Revenue to direct that, in the case of any particular tenure specified in such order, jurisdiction shall be exercised by some other Collector than the Collector who would exercise jurisdiction under Clause (1): and such other Collector shall thereupon conduct the sale and otherwise exercise jurisdiction in respect of such tenure.

(3) Subject to such rules as may be made in that behalf by the Board of Revenue, a Deputy Collector may be authorized by a Collector to conduct sales or otherwise exercise jurisdiction under this Chapter.

Chapter XVII.—Of certain Special Rules of Procedure applicable to Suits between Landlords and their Tenants or Agents.

Code of Civil Procedure to apply to suits between landlords and their tenants or agents.

164. Save as in this Act is otherwise provided. *The Code of Civil Procedure* shall apply to all suits brought for causes of action arising between landlords and their tenants or agents; and all proceedings in such suits before and after decree shall be governed by the provisions of the said Code. *147.*

Special register of such suits to be kept in every Court.

A special register of such suits shall be kept by every Civil Court in the manner prescribed by section 58 of the said Code.

Suits between landlords and their tenants or agents where to be instituted.

165. The cause of action in all such suits shall be deemed to have arisen within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to entertain a suit for the recovery of the land in respect of which the relation of landlord and tenant or the agency exists between the parties. *148.*

Sarbarakars and tehsildars of khas estates may sue and be sued in their own names.

166. All suits arising out of the relation of landlord and tenant, which may be brought by or against landlords, and all such suits against agents as are mentioned in section 182 may be brought (*a*) by or against managers appointed under "The Court of Wards Act, 1879;" (*b*) by or against managers appointed by any Civil Court; and (*c*) by or against sarbarakars or tehsildars of estates held under the immediate management of the Revenue authorities, whether such estates are the property of private persons or of the Secretary *149.*

of State for India in Council. All such suits shall be conducted or defended in the name of the Secretary of State for India in Council, or in the names of private persons to whom such estates belong.

150 **167.** (*a*) Every naib or gomashtah thereto specially empowered by a written authority under the hand of his employer, shall, for the purposes of all such suits as are mentioned in section 164, be deemed to be the recognized agent of such employer within the meaning of sections 36, 37, and 38 of *The Code of Civil Procedure*, notwithstanding that such employer may be within the local limits of the jurisdiction of the Court in which any appearance, application, or act is made or done by such naib or gomashtah. Any such suit shall, nevertheless, be instituted and conducted in the name and on behalf of such employer.

Naibs or gomashtahs, thereto specially empowered, to be authorized agents in cases arising out of the relation of landlord and tenant.

(*b*) Every notice which may under any of the provisions of this Act be served upon, and every sum of money or fee which may under any of the provisions of this Act be tendered to, a landlord, may be served upon, or tendered to, any naib or gomashtah of such landlord empowered in the manner and for the purpose mentioned in clause (*a*); and such service or tender shall be as effectual as service upon, or tender to, such landlord himself.

Notice may be served upon, or money or fee tendered to, naib or gomashtah instead of landlord.

151 **168.** Every landlord shall be entitled to maintain a suit against any tenure-holder or ryot the rent of whose tenure or holding is payable to such landlord, and, subject to the provisions of section 26, every tenure-holder or ryot shall be entitled to maintain a suit against his landlord for the determination of all or any of the following matters, that is to say—

Suit by landlord or tenant to determine conditions of tenancy.

(1) In the case of a tenure-holder—

(*a*) the quantity of land held by such tenure-holder, when the tenure consists of specific lands:

(*b*) the amount of annual rent payable by such tenure-holder:

(*c*) the class to which such tenure-holder belongs—that is, whether he is entitled to hold at a fixed rent, or whether his rent is liable to enhancement under section 7, or whether he is entitled to the special rate of profit mentioned in section 10.

(2) In the case of a ryot—

(*a*) the quantity of land held by such ryot:

(*b*) the amount of annual rent payable for such land:

(*c*) the class to which such ryot belongs—that is, whether he is a ryot entitled to hold at fixed rates, or is a ryot having a right of occupancy, or is a ryot not having a right of occupancy.

If, in any suit instituted as above, it shall be disputed whether one of the parties to the suit is a tenure-holder or a ryot, the Court shall proceed to determine this question, and in so doing the Court shall have regard to the terms of the original demise, and to the mode in which the lands are held at the time of the institution of the suit. If the Court shall be of opinion that with reference to the custom of the district the extent of the land demised was such that it cannot reasonably be presumed that it was intended to be held as a ryot's holding, and shall further find that the person whose status is in dispute has sub-let more than one half of the total area demised to him, the Court may adjudge him to be a tenure-holder, and not a ryot.

The plaint in any suit under this section shall state the allegation of the plaintiff as to each of such matters respectively. No such suit shall be dismissed merely because the plaintiff fails to prove exactly the allegations made in his plaint.

152 **169.** A landlord desiring to eject a ryot or to cancel a lease on account of non-payment of arrears of rent, may sue for such ejectment or cancelment, and for recovery of the arrears in the same suit, or he may sue for such ejectment or cancelment, producing an unexecuted decree for arrears of rent as evidence of the existence of such arrears. In all such suits the decree shall specify the amount of the arrears, and if such amount, together with interest and the costs of the suit, be paid into Court within fifteen days from the date of the decree, execution shall be stayed. If the Court is closed on the fifteenth day, such amount may be paid in on the day upon which the Court re-opens.

Claim for ejectment or cancelment of lease how to be put forward.

Stay of ejectment on satisfaction of decree within fifteen days.

Explanation 1.—The judgment-debtor is entitled to the benefit of this fifteen days' rule, even though the lease contains a stipulation that it shall be void upon one or more instalments of rent falling into arrear, or upon the breach of any other condition as to payment of rent therein contained.

Explanation 2.—If the original decree is altered or amended on appeal or review, the fifteen days shall be computed from the date of the judgment on appeal or review. If on appeal or review the original decree be not altered or amended, the fifteen days shall be computed from the date of such original decree.

154 **170.** Subject to the provisions of section 56, process of execution in any such suit as is mentioned in section 164 may be issued against either the person or property of the judgment-debtor, but such process shall not be issued simultaneously against both his person and property. Process of execution against the property may be issued against either the moveable or immoveable property, or against both.

Process of execution may be issued against person or property, but not against both.

155 **171.** When in a suit brought by a landlord to eject a ryot liable to ejectment under the provisions of this Act, or to eject a farmer or other tenant holding only for a limited period after the determination of his lease or tenancy, or an agent after the determination of his agency, or to enforce any attachment or ejectment expressly authorized by any Regulation or Act, the Court passes a decree in favour of the plaintiff, no application for execution in the form provided in section 235 of *The Code of Civil Procedure* shall be necessary, but such Court shall forthwith, upon the plaintiff depositing in

Court to issue immediate execution in certain cases of ejectment, &c.

Court the necessary expenses, make an order for delivery of possession in execution of the decree: provided, however, that in cases to which section 169 is applicable, no such order shall be made until after the expiration of fifteen days from the date of the decree.

156 172. It shall not be lawful for the Court to entertain an application for stay of execution of the order mentioned in section 171 pending an appeal, and no person, who shall have been evicted under any such order, shall be restored to possession so long as the decree under which such order was issued shall remain unreversed.

In such cases execution not to be stayed pending appeal

157 173. Nothing contained in this Act shall be deemed to alter the law as established by Act X of 1859 passed by the Governor-General in Council, so as to confer a right of appeal in any suit tried and decided under the provisions of *The Code of Civil Procedure* or of Chapter XVIII of this Act by a District Judge or Additional Judge originally or in appeal, if the amount sued for or the value of the property claimed does not exceed one hundred rupees, and if no question of right to enhance or vary the rent of a ryot or tenant, or no question relating to title to land or to some interest in land as between parties having conflicting claims thereto, has been determined by the judgment in such suit.

No appeal from any decree of a District Judge or any additional Judge for money below Rs 100, unless right to enhance rent or title to land be determined by judgment.

Illustration.

A sues *B* for the rent of certain land *B* pleads that the rent of the land is payable to *C*, and not to *A*. *C* is not made a party to the suit, which is decreed against *B*. No question relating to a title to land or to some interest in land as between parties having conflicting claims thereto is determined by the judgment in this suit.

158 174. No application for a review of a judgment or order passed in any such suit as is mentioned in section 164 shall be received by a Civil Court other than the High Court of Judicature at Fort William in Bengal, after the expiration of thirty days from the date of such order or judgment.

Review of judgment not admissible after thirty days.

159 175. Any notice or summons, which it is necessary to issue under this Act, and for the service of which no special provision is made, shall be served under the provisions contained in *The Code of Civil Procedure* for the service of summons on a defendant.

Notice or summons not specially provided for, to be served under the provisions of *The Code of Civil Procedure* for service of summons on defendant.

Measurement of Lands.

176. If any person desiring to measure any land which he has a right to measure in accordance with section 67, is opposed in making such measurement by the occupant of the land; or if any tenure-holder or ryot having received notice of the intended measurement of land held by him, which is liable to such measurement, refuses to attend and point out such land, the person claiming the right to measure such land may apply to establish his right to measure such land in the Court which would have jurisdiction in case such suit had been brought for the recovery of such land, and such Court shall hear and determine the right to make such measurement, and, if the case shall so require, shall make an order enjoining or excusing the attendance of any such tenure-holder or ryot. If any tenure-holder or ryot, after the issue of an order enjoining his attendance, neglects to attend and to point out the land, it shall not be competent to him to contest the correctness of the measurement made, or any of the proceedings held, in his absence.

Procedure if opposition made to measurement of land, or if tenants refuse to attend and point out land.

177. If the proprietor of an estate or owner of a tenure, or other person entitled to receive the rents of an estate or tenure, is unable to measure the lands comprised in such estate or tenure or any part thereof, by reason that he cannot ascertain who are the persons liable to pay rent in respect of the lands, or any part of the lands comprised therein, such proprietor or other person may apply to the Court which would have had jurisdiction in case a suit had been brought for the recovery of such lands, and such Court thereupon, and on the necessary costs being deposited therein by the applicant, shall order such lands to be measured, and shall cause a copy of such order to be transmitted to the Collector in whose jurisdiction the lands are situate, together with the sum so deposited for costs, and the Collector shall thereupon proceed to measure such lands, and shall ascertain and record the names of the persons in occupation of the same, or, on the special application of the proprietor or other person aforesaid, but not otherwise, shall proceed to ascertain, determine, and record the tenures and undertenures, the rates of rent payable in respect of such lands, and the persons by whom respectively the rents are payable.

Procedure to effect measurement of land, when it cannot be ascertained who are the persons liable to pay rent.

178. If after due enquiry the Collector shall be unable to cause such lands to be measured, or to ascertain or record the names of the persons in occupation of the same, or if he shall (in any case in which such special application shall have been made as aforesaid) be unable to ascertain who are the persons having tenures or undertenures in such land, or any part thereof, then, and in any such case, such Collector may declare the same to have lapsed to the party on whose application such enquiry may have been made.

Procedure if Collector cannot measure lands or ascertain names of tenants.

179. If any person, within fifteen days after such Collector shall have recorded the name of such person as being in occupation of such land, or any part thereof, or shall have declared a tenure to have lapsed, shall appear and show good and sufficient cause for his previous non-appearance, and shall satisfy such Collector that there has been a failure of justice, such Collector may, upon such terms of conditions as may seem fit, alter or rescind such order according to the justice of the case.

Order may be revised on subsequent appearance.

180 The Collector shall, as soon as conveniently may be after he shall have finally completed any such measurement and record, return a copy thereof to the Court by

Collector how to act on completing measurement.

which such measurement had been ordered, and such Court shall receive and record the same; and every decision of the Collector made in pursuance of sections 177, 178, and 179 shall be appealable as if the same had been an order of the Court into which such copy had been returned, made upon the day on which such copy was so returned; but, save as aforesaid, every decision of such Collector made in pursuance of the provisions of the aforesaid sections shall be final.

Procedure and powers of Collector.

181. The provisions of any Act or Acts for the time being in force in Civil Courts in Bengal, relating to the evidence of witnesses, to procuring the attendance of witnesses, and the production of documents, and to the examination, remuneration, and punishment of witnesses, shall apply to all proceedings before any Collector under the sections aforesaid; and for such purposes the Collector shall have all the powers and authorities in and by such Acts or any of them conferred upon the Court.

Suits against Agents.

160. **182.** When an agent employed by a landlord in the collection or receipt of rents or the management of land neglects or refuses to deliver to such landlord any mony, accounts, or papers which have come into or have been in his hands in the course of such employment, or neglects or refuses to render a proper account of his receipts and disbursements, such landlord may sue such agent in the Civil Court.

Suits for money or accounts or papers against agents employed in collection or receipt of rents or management of land.

When such landlord is able to ascertain the exact sum of money or the specific accounts or papers in the hands of such agent he shall state such sum or describe such accounts or papers in his plaint.

Landlord may sue for exact sum or specific accounts or papers when known.

161. **183.** When such landlord is unable to ascertain the exact sum of money, or the papers, vouchers, or other documents in the hands of the agent in consequence of such agent having neglected or refused to render proper accounts, such landlord shall set forth this fact in his plaint, and may pray that the Court take an account from such agent and make a decree for the payment of such sum of money, if any, which, upon taking such account, may be found to be due to such landlord, and for the delivery of such papers, vouchers, or other documents as may be found to be in the hands of such agent.

When exact sum on specific papers not known in consequence of agent not having rendered proper accounts, landlord may ask that Court take an account

162. **184.** The provisions of *The Code of Civil Procedure* shall be applicable to every plaint presented under section 182 or section 183; but, in the case of any such plaint as is described in section 183, the summons to the defendant issued under section 64 of the said Code shall call upon such defendant to show cause why he should not render a full and satisfactory account of all sums received and disbursed by him, and of all papers, vouchers, or other documents which may have come into his hands in the discharge of his duties as agent.

Summons to defendant to require him to show cause why he should not render accounts.

163. **185.** If such defendant fails to show cause or does not, in the opinion of the Court, show sufficient cause why he should not render such full and satisfactory account, the Court shall make an order requiring such defendant to file such account in Court and shall fix a day on or before which such account shall be so filed. Such order may be enforced in the manner provided in section 260 of *The Code of Civil Procedure*.

If defendant fail to show cause or do not show sufficient cause, Court shall make an order that a proper account be filed and shall fix a date by which it shall be filed. Such order how enforced.

164. **186.** When such defendant files such account, the Court shall allow the plaintiff a reasonable time to examine it and file objections thereto, if he desires to make any such objections, and shall then fix a date upon which such Court shall proceed to hear such objections, if any, and to examine such account. If upon such hearing it appears that the plaintiff is not entitled to any sum of money or to any papers, vouchers, or other documents in the hands of the defendant, such suit shall be dismissed, If it appears that the plaintiff is entitled to a sum of money or to any such papers, vouchers, or other documents, a decree shall be made for the payment or delivery thereof, and such sum of money, papers, vouchers, or other documents shall be specified in such decree.

Plaintiff to be allowed time to examine account filed, and object. Day to be fixed for hearing objections. Decree to be made after hearing.

CHAPTER XVII.—OF THE PROCEDURE IN SUITS FOR THE RECOVERY OF ARREARS OF RENT, &c., AND CERTAIN OTHER SUITS.

165. **187** When the relation of landlord and tenant is admitted or proved to subsist between the parties, the procedure contained in this chapter shall apply to the following suits, that is to say—

Procedure contained in this chapter to be followed in certain suits, when relation of landlord and tenant is admitted or proved.

(1) to suits for the recovery of the rent of land situated outside the local limits of the ordinary Original Jurisdiction of the High Court of Judicature at Fort William in Bengal:

(2) to suits for ejectment from any such land:

(3) to suits brought to recover possession of any such land:

(4) to suits for damages on account of illegal exaction of rent or cesses, or on account of the refusal of receipts:

(5) to suits brought under section 44 to compel the registration of successions to, or transfers of, tenures, under-tenures, or occupancy holdings:

provided that it shall be competent to the District Judge, upon the application of any party thereto, to direct that any such suit shall be tried according to the provisions of *The Code of Civil Procedure*, and upon such order being made the whole of such provisions shall be applicable to the trial of such suit.

District Judge may direct any such suit to be tried under the ordinary provisions of *The Code of Civil Procedure*

The Plaint, &c.

166 **188.** The suit shall be instituted by presenting a plaint. Such plaint shall be presented to the Civil Court of the lowest grade competent to try such suit.

Plaint to be presented to Civil Court of lowest grade competent to try suit.

If the land mentioned in section 165 is situate within the limits of different districts or within the limits of a single district, but within the jurisdiction of different Courts, the provisions of section 19 of *The Code of Civil Procedure* shall be applicable.

Place of suing how determined when there are different local limits of jurisdiction.

While a suit so instituted is pending, no Court shall receive or try another suit instituted for the same relief between the same parties, or parties under whom they or any of them claim, and in which the matter in issue is directly and substantially in issue in the suit so previously instituted.

While such suit is pending no subsequent suit to be entertained for same subject matter between same parties.

167 **189.** The plaint must contain the following particulars :—

Particulars to be contained in plaint.

(*a*) The name of the Court in which the suit is brought;

(*b*) The name, description, and place of residence of the plaintiff;

(*c*) The name, description, and place of residence of the defendant;

(*d*) A simple concise statement of the claim;

(*e*) The date when the cause of action arose;

(*f*) A demand of the relief prayed for; and

(*g*) in suits concerned with tenures, undertenures, holdings, or land, the extent, situation, designation, and boundaries of the same; or, where the plaintiff is unable to give the boundaries, in lieu thereof a description sufficient for identification.

The provisions of section 49 of *The Code of Civil Procedure* as to the language of the plaint shall be applicable.

168 **190.** (*a*) The plaint shall be signed by the plaintiff, and in any case in which he has employed a pleader by such pleader. It shall also be verified at the foot by the plaintiff or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case: provided that if the plaintiff by reason of absence or for other good cause is unable to sign the plaint, it may be signed by any person duly authorized by him in this behalf.

Plaint to be signed and verified.

The provisions of section 52 of *The Code of Civil Procedure* as to the contents and signature of the verification shall be applicable.

(*b*) The provisions of sections 53, 54, 55, 56, and 57 of *The Code of Civil Procedure* as to rejecting, amending, and returning plaints shall, so far as they are revelant, apply to plaints presented under section 188. When any such plaint is admitted, the Court shall cause the particulars mentioned in section 189 to be entered in the registered prescribed by section 164. Such entries shall be numbered in a separate series for each year according to the order in which plaints are admitted.

Rejection, amendment, return, and admission of plaints.

Parties, &c.

191. The provisions of section 27 of *The Code of Civil Procedure* as to substituting or adding a plaintiff for, or to, a plaintiff suing, and the provisions of section 32 of the same Code as to dismissing or adding parties, shall be applicable to all suits instituted and tried under the provisions of this chapter: provided that the Court shall not add as a party to any suit tried under the procedure contained in this chapter a person setting up a title adverse to the plaintiff or defendant in respect of the subject-matter of the suit; but any question of title disputed between any such person and a party to the suit may be decided in such suit as between the parties thereto, if the decision of such question is necessary to the proper determination of the suit. 169.

Substituting, dismissing, and adding of parties.

Person claiming adversely to the landlord or tenant, who are parties to the suit, not to be added as a party

Illustration.

A, proprietor, sues, *B*, a ryot, for the rent of a holding, and files in Court a kabulyat alleged to have been executed for such holding by *B* in his favour. *B* denies the execution of the kabulyat, and pleads that his holding forms part, not of *A's* estate, but of the estate of *X*, a neighbouring proprietor. *X* appears, makes a similar allegation, and desires to be made a party to the suit. The Court shall not make *X* a party to the suit, but shall confine itself to the question of the genuineness of the kabulyat.

192. The following provisions of *The Code of Civil Procedure* shall be applicable to all suits instituted and tried under the provisions of this chapter, that is to say— 170.

Provisions of *Code of Civil Procedure* as to joinder of causes of action, transfer of suits, and employment of recognized Agents and Pleaders made applicable to suits under this chapter.

Section 45 as to the joinder of causes of action;

Section 25 as to the transfer of suits; and

Section 36, clauses (*a*) and (*b*) of section 37, sections 38, 39, 40, and 41 as to the employment of recognized Agents and Pleaders.

Documentary Evidence, &c.

193. The following provisions of *The Code of Civil Procedure* as to the production, admission, rejection, and return of documentary evidence shall be applicable to all suits instituted and tried under the provisions of this chapter, that is to say— 171.

Certain povisions of *The Code of Civil Procedure* as to the production, &c., of documentary evidence made applicable to suits under this chapter.

Section 59 as to the production of any document upon which plaintiff sues, and the delivery of such document or a copy thereof, and as to a list of the documents relied on by plaintiff as evidence;

Section 60 as to stating in whose possession or power a document is;

Section 62 as to production of shop-books and marking or returning entries therein;

Section 63 as to inadmissibility of documents not produced when plaint is filed;

Section 137 as to Court sending for papers from its own records or from other Courts; provided that any such affidavit as is mentioned in the said section 137 may be made by a *mukhtar* or by any person acquainted with the facts;

Section 138 as to documentary evidence being in readiness at the first hearing;

Section 139 as to the effect of the non-production of documents;
Section 140 as to the Court receiving documents and rejecting irrelevant or inadmissible documents;
Section 141 as to placing documents on the record, as to marking and filing proved documents, and as to entries in books;
Section 142 as to marking and returning rejected documents;
Section 143 as to the Court ordering documents to be impounded; and
Section 144 as to the return of documents admitted in evidence.

Proceedings preliminary to Hearing.

172. **194.** When the plaint has been registered under section 190, a summons may be issued to each defendant to appear and answer the claim on a day to be therein specified—

Issue of summons to defendant Appearance how to be made.

(*a*) in person, or
(*b*) by a pleader, duly instructed and able to answer all material questions relating to the suit, or
(*c*) by a pleader, accompanied by some other person able to answer all such questions.

Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court: provided that no such summons shall be issued when the defendant has appeared at the presentation of the plaint and admitted the plaintiff's claim.

Personal appearance of parties.

The provisions of sections 66 and 67 of *The Code of Civil Procedure* as to the personal appearance of a plaintiff or defendant, and of section 69 of the same Code as to fixing the day for the appearance of the defendant, shall apply to all cases instituted and tried under this chapter.

173. **195.** The summons shall be for the final disposal of the suit. It shall direct the defendant to produce any document, the production of which is required by the plaintiff, or upon which such defendant may desire to rely in support of his defence. It shall further instruct the defendant to bring his witnesses on the day specified, if they are willing to attend without summons, or, if they are not so willing, to have summons served upon them in sufficient time to enable them to be present on such day.

Summons to be for final disposal of case, and to direct defendant to produce documents and witnesses.

174. **196.** The following provisions of *The Code of Civil Procedure* shall be applicable to all suits instituted and tried under the provisions of this chapter, that is to say—

Provisions for service of summons on defendant.

Section 72 as to delivery of summons for service on defendant;
Section 73 as to mode of service;
Section 74 as to service on several defendants, except the proviso;
Section 77 as to service on agent in charge of immoveable property;
Section 78 as to service on adult male member of defendant's family;
Section 79 as to person served signing an acknowledgment;
Section 80 as to procedure when defendant or other person refuses to sign the acknowledgment or cannot be found;
Section 81 as to endorsement of time and manner of service;
Section 82 as to examination of serving officer and substituted service;
Section 83 as to the effect of substituted service;
Section 84 as to fixing time for appearance when service is substituted;
Section 85 as to service of summons when defendant resides within jurisdiction of another Court and has no agent to accept service;
Section 86 as to service within the Presidency Town;
Section 87 as to service on defendant in jail;
Section 88 as to procedure, if jail be in a different district;
Section 91 as to substitution of a letter for summons;
Section 92 as to the mode of sending such letter;
Section 93 as to process being served at the expense of the party issuing it;
Section 94 as to notices and orders in writing being served as summonses; and
Section 95 as to postage:

Provided that if, in any suit for arrears of the rent of a transferable tenure, under-tenure, or holding, service of summons on the defendant cannot be effected in accordance with the above provisions, the Court may direct that a copy of such summons be posted up in some conspicuous place upon the land included in such tenure, under-tenure, or holding, and that this shall be deemed a good and sufficient service.

175. **197.** If in any such suit as is mentioned in clause (1) of section 187 the plaintiff presents with his plaint an application for the arrest of the defendant before judgment, on the ground that, if a summons be issued in the first instance, such defendant will abscond instead of appearing to answer the claim, the Court shall examine the plaintiff or some one on his behalf acquainted with the facts and shall inspect the documents, if any, produced by the plaintiff, and if it is satisfied—

Arrest of the defendant before judgment allowed in certain cases, but not in case of tenure, under-tenure, occupancy holding hypothecated for its own rent.

(*a*) that the defendant is resident within the district in which such Court is held;
(*b*) that there are *primâ facie* grounds for believing the claim to be well-founded; and
(*c*) that if a summons be issued in the first instance, the defendant will abscond instead of appearing to answer the claim;

the Court may issue a warrant for bringing the defendant before it to show cause why he should not give security for payment of the amount claimed by the plaintiff: provided that no such warrant shall be issued in a suit for arrears of rent of any such tenure, under-tenure, or occupancy holding as is mentioned in section 56.

176. **198.** When any such warrant is issued, the Court shall a fix reasonable time for the return thereof, and the officer entrusted with the service shall at the time of arresting the defendant deliver

Time for return of warrant. Notice to be served on defendant when arrested.

to him a notice containing the particulars of the claim, and requiring the defendant, if he contest the same, to bring with him any document upon which he may intend to rely in support of his defence.

177. **199.** In any case in which a defendant is arrested under any such warrant, he shall be brought with all convenient speed before the Court, and the Court may, if it thinks fit, and if the defendant fails to show cause to the contrary, require him to give security for payment of the amount claimed by the plaintiff, and, in default of such security being given, may commit such defendant to the civil jail to be there detained until he shall furnish such security or deposit such sum as the Court may order: provided that the defendant may at this stage apply to be declared an insolvent, in which event the provisions of Chapter XX of *The Code of Civil Procedure* shall be applicable.

Procedure when defendant is arrested and brought before the Court under warrant.

The provisions of section 480 of *The Code of Civil Procedure*, as to an application by a surety to be discharged, shall be applicable to any case in which security is given by the defendant; and the provisions of section 482 of the same Code as to subsistence allowance shall be applicable to any case in which the defendant is committed to the civil jail.

178. **200.** If the defendant cannot be arrested under the warrant, the Court may, on the application of the plaintiff, either postpone the case for such period as it may think proper to enable such plaintiff to apply for another warrant, or may forthwith issue a proclamation, to be affixed in the Court-house and at the residence of the defendant, fixing a day for the hearing of the case, which shall not be less than ten days from the date of the publication of such proclamation at the residence of the defendant. If the defendant shall appear in pursuance of the proclamation, he shall be dealt with as provided in section 199.

Procedure if warrant of arrest cannot be served upon the defendant.

179 **201.** If it shall appear to the Court that the arrest of the defendant was applied for without reasonable cause, the Court may in its decree award to such defendant such sum as it may deem a reasonable compensation for any injury or loss caused by reason of such arrest or of his detention in jail during the pendency of the suit.

Compensation for arrest obtained without reasonable cause.

180. **202.** The provisions of sections 483 to 491 (inclusive) of *The Code of Civil Procedure*, relating to attachment before judgment and compensation for improper attachments, shall be applicable to all such suits as are mentioned in clause (1) of section 187: provided that, in a suit for the recovery of arrears of rent due on account of a tenure, under-tenure, or occupancy holding to which the provisions of section 56 are applicable, no such attachment before judgment shall be directed unless the plaintiff can satisfy the Court that such arrears, together with interest and costs of the suit, are not likely to be satisfied by the sale proceeds of such tenure, under-tenure, or occupancy holding.

Provisions of *The Code of Civil Procedure* as to attachment before judgment to apply to suits for arrears of rent.

191 **203.** Standing crops and other ungathered products, which have been attached under section 202, may, notwithstanding such attachment, be reaped and gathered by the defendant, and may be stored in such granaries or other places as are commonly used by him for the purpose. If the defendant neglects to do so, the plaintiff may cause such crops or products to be so reaped or gathered, and may store them in such granaries or places as aforesaid, or in some other convenient place in the neighbourhood.

Standing crops, &c., attached, may be reaped, gathered, and stored by defendant, or, if defendant neglect, by plaintiff.

The Court may, on the application of any party to the suit, order the sale by any person named in such order, and in such manner and on such terms as it thinks fit, of any such crop or products which cannot be stored and kept without deterioration or loss.

Ad interim sale of crops or products which cannot be kept without deterioration.

182. **204** The following provisions of *The Code of Civil Procedure* relating to the summoning and attendance of witnesses shall be applicable to all suits instituted and tried under the provisions of this chapter, that is to say—

Provisions as to the summoning and attendance of witnesses.

Section 159 as to summons to attend to give evidence or produce documents;

Section 160 as to expenses of witnesses being paid into Court on applying for summons, and as to the scale of such expenses;

Section 161 as to tender of expenses to witnesses;

Section 162 as to procedure where insufficient sum is paid in, and where witness is detained more than one day;

Section 163 as to time, place, and purpose of attendance being specified in the summons;

Section 164 as to summons to produce document;

Section 165 as to power to require persons present in Court to give evidence;

Section 166 as to the manner of serving summons;

Section 167 as to time for serving summons;

Section 168 as to attachment of property of absconding witness;

Section 169 as to withdrawal of attachment, if witness appears;

Section 170 as to procedure, if witness fails to appear

Section 171 as to Court of its own accord summoning strangers to suit as witnesses;

Section 172 as to persons summoned to give evidence being bound to attend;

Section 173 as to when such persons may depart;

Section 174 as to consequences of non-attendance, and of refusal to give evidence or produce documents;

Section 175 as to procedure when witness absconds;

Section 176 as to when persons are not bound to attend in person to give evidence;

Section 177 as to consequence of refusal of party to give evidence when called on by the Court; and

Section 178 as to rules relating to witnesses being applicable to parties summoned.

Appearance of Parties.

183. **205.** The following provisions of *The Code of Civil Procedure*, relating to the appearance of the parties and the consequences of non-appearance, shall be applicable to all suits instituted and tried under this chapter, that is to say—

Provisions as to the appearance of parties, and consequence of non-appearance

Section 90 as to appearance of parties on day fixed in summons for defendant to appear and answer;

Section 97 as to dismissal of suit where summons not served in consequence of plaintiff's failure to pay the fee for issuing it;

Section 98 as to dismissal of suit if neither party appear;

Section 99 as to its being in such case competent to plaintiff to bring a fresh suit, or to Court to restore the suit to the file;

Section 100 as to the procedure, if plaintiff only appear;

Section 101 as to the procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance;

Section 102 as to the procedure where defendant only appears;

Section 103 as to decree by default against plaintiff being a bar to a fresh suit;

Section 105 as to the procedure in case of non-attendance of one or more of several plaintiffs;

Section 106 as to the procedure in case of non-attendance of one or more of several defendants;

Section 107 as to the consequence of non-attendance, without sufficient cause shown, of party ordered to appear in person;

Section 108 as to setting aside a decree *ex-parte* against a defendant; and

Section 109 as to no decree being set aside without notice to opposite party.

184. **206.** The defendant may, if he desires to do so, file a written statement of his defence. No other written statement shall be filed by either of the parties or received by the Court, provided that the Court may at any time call for a written statement and fix a time for presenting the same.

Defendant may file written statement of defence No other written statement, unless called for by the Court.

185. **207.** The following provisions of *The Code of Civil Procedure* as to payment of money into Court shall be applicable to all suits instituted and tried under the provisions of this chapter, that is to say—

Provisions as to payment of money into Court and interest on money so paid in, and as to set-off

Section 376 as to deposit by defendants of amount in satisfaction of claim;

Section 377 as to notice of deposit to plaintiff;

Section 378 as to interest on sum deposited not being allowed to plaintiff after receipt of notice;

Section 379 as to procedure where plaintiff accepts deposit as satisfaction in part or in full; and

Section 111 as to set-off of ascertained sum legally recoverable.

186. **208.** The Court may of its own motion or upon the application of either party to the suit direct a local investigation in any case in which it deems fit. The provisions of sections 392, 393, 397, 398, 399, and 400 of *The Code of Civil Procedure* shall be applicable to every such investigation.

Court may direct a local investigation

187. **209.** If either party fails, without sufficient cause, to produce the evidence on which he relies, the Court may at once pronounce judgment.

Judgment at once, if either party fails, without sufficient reason, to produce his evidence.

Adjournments

188. **210.** The hearing of the suit may be adjourned to a future day to be named in the order of adjournment in the following cases, that is to say—

Hearing of suit may be adjourned in what cases

(1) when either party is not present in person, and his pleader or the person mentioned in clause (*c*) of section 194 is unable to answer a material question relating to the case, which the Court is of opinion that the party ought to answer, and is likely to be able to answer, if present in person:

(2) when the Court, after proceeding as provided in section 213, is of opinion that the parties are at issue upon some question upon which it is necessary to hear further evidence.

(3) when either party for sufficient reason, which, shall be recorded by the Court, requires time for the production of evidence or for any other purpose.

In case (1) the Court shall direct the party to appear on the day to which the hearing is adjourned. In case (2) the Court shall frame an issue for trial at the adjourned hearing In all cases the Court shall make such order as it sees fit with respect to the costs of the adjournment:

Costs of adjournment.

Provided that, when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing to be necessary for reasons to be recorded by the Judge with his own hand.

Hearing to be continuous.

189. 211 The provisions of section 157 of *The Code of Civil Procedure* as to the course to be pursued if the parties fail to appear on the day to which the hearing is adjourned, and of section 158 of the same Code as to the Court proceeding to decide the suit notwithstanding that either party fails to produce his evidence; shall be applicable to all suits instituted and tried under the provisions of this chapter

Course to be pursued, if parties fail to appear or produce their evidence at the adjourned hearing

The Hearing.

190 **212.** When both parties appear, in the manner directed in the summons or subsequently by the Court, upon the day appointed for the hearing or adjourned hearing, the Court shall—

When both parties present, Court to ascertain and record whether each admits or denies the allegations of fact and documents of the opposite party.

(1) ascertain from the defendant or his pleader (*a*) whether he admits or denies the allegations of fact made in the plaint; (*b*) when he has not filed a written statement or the statement filed by him is insufficient, what allegations of fact he makes in reply to the plaint:

(2) ascertain from the plaintiff or his pleader, whether he admits or denies the allegations of fact made by the defendant:

(3) ascertain from each party or his pleader, whether he admits or denies the genuineness of any document produced by the opposite party.

The Court shall record such admissions and denials.

191 **213.** The Court may then examine orally any party appearing in person or present in Court, or any person able to answer any material questions relating to the suit, by whom such party or his pleader is accompanied; and may, if it thinks fit, put in the course of such examination questions suggested by either party.

Oral examination of party or person able to answer material question.

Substance of examination to be reduced to writing and form part of the record.

The substance of such examination shall be reduced to writing by the Judge and shall form part of the record.

192 **214.** The evidence of the witnesses in attendance shall be taken orally in open Court in the presence and hearing and under the personal direction and superintendence of the Judge.

Witnesses to be examined in open Court in presence and hearing of Judge.

It shall not be necessary to take down such evidence in writing at full length; but the Judge, as the examination of each witness proceeds, shall make a memorandum of what he deposes, sufficient to give the gist and substance of his evidence. Such memorandum shall be written by the Judge with his own hand and in his own language, or, if English is not his own language, and he is able to make such memorandum in English, then in the English language. It shall further be signed by him and shall form part of the record: provided that any Judge, making such a memorandum, may also take down at full length any particular question and answer which he may think fit so to take down.

Evidence of witnesses in what manner to be recorded.

If the Judge be rendered unable to make a memorandum as above required, he shall cause the reason of such inability to be recorded, and shall cause the memorandum to be made in writing from his dictation in open Court. Every memorandum so made shall form part of the record.

Judge rendered unable to make memorandum to cause it to be made from his dictation.

193 **215.** The following provisions of *The Code of Civil Procedure* shall be applicable to all suits tried under the provisions of this chapter, that is to say—

Some provisions of *The Code of Civil Procedure* as to mode of recording evidence made applicable.

Section 186, as to any particular question and answer being taken down;

Section 188, as to remarks upon the demeanour of witnesses;

Section 191, as to power to deal with evidence taken down by Judge removed before conclusion of suit; and

Section 193, as to power of Court to recall and examine a witness.

216. After proceeding in accordance with the provisions of sections 212, 213, and 214, after considering the documents admitted or proved on behalf of each party, and after hearing any arguments which may be addressed to it by the parties or their pleaders, the Court shall pronounce judgment in open Court usually at once, but, if this is not possible, then on some future day of which due notice shall be given to the parties or their pleaders.

Judgment when to be pronounced

The following provisions of *The Code of Civil Procedure* shall be applicable to all suits instituted and tried under this chapter, that is to say—

Section 199, as to power to pronounce judgment written by Judge's predecessor;

Section 200, as to the language of the judgment;

Section 201, as to translation of the judgment;

Section 202, as to dating, signing, and correcting the judgment;

Section 203, as to contents of judgments of 194
Courts other than Courts of Small Causes;

Section 219, as to the judgment directing by whom costs are to be paid;

Section 220, as to power of Court in the matter of costs;

Section 221, as to costs being set off against any sum admitted or found to be due; and

Section 222, so much only as relates to interest on costs.

217. (*a*) The following provisions of *The Code of Civil Procedure* shall be applicable to the decree, that is to say—

Provisions as to the decree, its contents, &c.

Section 205, as to the date of the decree, and the Judge signing it;

Section 206, as to the contents of the decree, 195
and power to amend it;

Section 210, as to payment by instalments; and

Section 216, as to a set-off.

(*b*) A decree for money may direct that the amount decreed shall carry interest not exceeding six per centum per annum until such amount is realized.

Interest on amount of decree.

(*c*) A decree in any of the suits mentioned in clause 1, 2, 3 or 5 of section 187 shall contain the particulars mentioned in clause (*g*) of section 189.

Decrees in certain suits to describe the land

(*d*) A decree for arrears of the rent of a tenure, under-tenure, or occupancy holding, and also for arrears of the rent of any other tenure, under-tenure or occupancy or other holding, shall show separately the arrears decreed in respect of each tenure, under-tenure or occupancy holding to which the provisions of section 56 are applicable.

Decree to show separately arrears decreed in respect of each tenure, under-tenure or occupancy holding liable to sale for its own arrears.

196 218. Certified copies of the judgment and decree shall be furnished to the parties on application to the Court and at their expense.

Parties entitled to certified copies of judgment and decree.

Execution of Decrees.

General Provisions.

197 219. Application for execution shall be made by the decree-holder, or his pleader. Such application shall be in writing unless it is made at the time when judgment is pronounced, in which case it may be made verbally, subject, however, to the provisions of section 223.

Application for execution by whom to be made—to be in writing unless made when judgment is pronounced, in which case it may be made verbally.

220. The following provisions of *the Code of Civil Procedure* shall be applicable, so far as they are relevant, to the execution of decrees in suits instituted and tried under the provisions of this chapter, that is to say—

Provisions of *The Code of Civil Procedure* applicable to the execution of decrees in suits under this chapter.

Section 223, as to the Court by which the decree may be executed:

Section 224, as to the procedure when the Court desires that its own decree shall be executed by another Court:

Section 225, as to such other Court filing without proof the copies of decree, &c., transmitted:

Section 226, as to execution of the decree by the Court to which it is sent:

198 Section 227, as to execution by High Court of decrees transmitted by other Court:

Section 228, as to powers of Court to which decree is sent for execution; and as to appeal from orders passed in execution:

Section 239, as to Court to which decree is sent staying execution:

Section 240, as to requiring security from, or imposing conditions on, judgment-debtor in such cases:

Section 241, as to liability of judgment-debtor or his property discharged under section 239 to be retaken:

Section 242, as to order of Court which made decree or of Appellate Court being binding on Court to which decree sent:

Section 230, clause 2, as to the discretion of the Court to refuse execution at the same time against person and property:

Section 231, as to application for execution by joint decree-holder:

Sections 232 and 233 as to application for execution by transferee of decree, but only when such transferee is also the transferee of the decree-holder's interest in the tenure, under-tenure, holding or land for arrears of the rent of which such decree has been passed:

Section 234, as to application for execution against representatives of deceased judgment-debtor:

Section 243, as to stay of execution pending suit between decree-holder and judgment-debtor:

Section 244, as to questions to be decided by Court executing decree:

Section 247, as to cross decrees:

Section 247, as to cross claims under the same decree:

Section 248, as to notice in certain cases to show cause why decree should not be executed:

Section 249, as to procedure after issue of notice:

Section 250, as to when warrant is to issue:

Section 251, as to date, signature, seal, delivery, and time for return of warrant:

Section 252, as to decree against representative of deceased for money to be paid out of deceased's property:

Section 253, as to decree against surety:

Section 254, as to execution of decrees for money, but subject to the provisions of section 64 of this Act:

Section 257, as to modes of paying money under a decree:

Section 257A, as to agreements to give time to judgment-debtor and for satisfaction of judgment-debt:

Section 258, as to payment to decree-holder:

221. If the decree be for the ejectment of a ryot from land, or for restoring a ryot to the possession of land, such decree shall be executed by delivering the possession of such land to the party to whom it has been adjudged by the decree or to such person as he appoints to receive delivery on his behalf, and, if need be, by removing any person bound by the decree who refuses to vacate such land. 199

Mode of executing decree for ejectment of ryot or for restoring ryot to possession.

222. If the decree be for the ejectment of a tenure-holder, under-tenure-holder, or other person from land in the occupancy of a tenant or other person entitled to occupy the same, or for restoring a tenure-holder, under-tenure-holder, or other person to the possession of land in the occupancy of a tenant or other person entitled to occupy the same, such decree shall be executed by affixing a copy of the execution-warrant in some conspicuous place on the land, and by proclaiming to the occupant by beat of drum, or in such other mode as is customary, at some convenient place, the substance of the decree: 200

Mode of executing decree for ejecting or restoring to possession a tenure-holder, under-tenure-holder, or other person in possession of land occupied by tenant.

provided that if the occupant can be found, a notice in writing containing such substance shall be served upon him, and in such case no proclamation need be made.

Procedure for the Sale of Tenures, Under-tenures, and Holdings in Execution of Decrees for their own Rent.

201 223. When decree has been made wholly or partly for arrears of rent due for a tenure, under-tenure, or occupancy holding, the first application for executing such decree in respect of such arrears shall, if in writing, contain, and, if made orally, be supplemented as soon as convenient by a written statement containing the following particulars, that is to say—

Form of application for execution of a decree for arrears of rent of a tenure, under-tenure, or occupancy holding.

(*a*) the number of the suit;

(*b*) the names of the parties;

(*c*) the date of the decree;

(*d*) the amount of rent decreed;

(*e*) the amount of costs decreed;

(*f*) whether any appeal has been preferred from the decree;

(*g*) a sufficient description of such tenure, under-tenure, or occupancy holding, containing the area and boundaries, as far as known;

(*h*) the annual rent of such tenure, under-tenure, or occupancy holding.

In any case in which such register as is prescribed by section 46 is kept, there shall, with such application or written statement, be filed a copy of so much of such register as relates to such tenure, under-tenure, or occupancy holding.

Copy of entry in register prescribed by section 46, to be filed with application.

202 224. When such application or written statement has been presented in due form, the Court shall make an order for the sale of such tenure, under-tenure, or occupancy holding. If such application is not in due form, the Court may allow it to be amended or may reject it without prejudice to a fresh application in proper form.

If application in proper form, Court shall direct sale of tenure, under-tenure, or occupancy holding. If not in proper form, may be amended or rejected.

225. (*a*) When an order for the sale of such tenure, under-tenure, or occupancy holding has been made under section 224, notice of the sale so ordered shall be given in the following manner, that is to say—

Notice of sale of tenure, under tenure, occupancy holding how to be published.

203 (1) by posting up in the Court-house of the Court aforesaid, a notification containing the particulars specified in section 223, and announcing that such tenure, under-tenure, or occupancy holding will be sold on a date to be stated therein:

(2) by posting up a similar notification in the kachahri of the Collector of the district:

(3) when the decree is not executed by the District Judge, by posting up a similar notification in the Court-house of the District Judge:

(4) by posting up a similar notification on some conspicuous place upon the land of such tenure, under-tenure, or occupancy holding:

(5) by posting up a similar notification upon some conspicuous place in the town or village nearest to which such tenure, under-tenure, or occupancy holding is situate.

(*b*) In the case of a tenure or under-tenure, such notification shall further announce that such tenure or under-tenure shall first be put up to auction subject to the registered incumbrances specified in section 228, and shall be sold subject to such incumbrances, if the sum bid is sufficient to liquidate the amount of the decree and costs: and that otherwise it may, if the decree-holder so desire, be sold free of all incumbrances on a subsequent day, of which due notice will be given.

Notification of sale of tenure or under-tenure to state that sale shall be subject to incumbrances, if sum bid satisfy decree, otherwise that sale may be made free of incumbrances.

(*c*) In the case of an occupancy holding, the notification shall announce that such holding will be sold free of all incumbrances. Provided that it shall be lawful for the Lieutenant-Governor of Bengal to direct, by notification published in the *Calcutta Gazette*, that in any district or part of the district, occupancy holdings shall be sold subject to the same conditions as tenures and under-tenures under clause (*b*); and in such case the notification shall follow the form prescribed in the said clause (*b*).

Occupancy holding to be sold free of all incumbrances.

(*d*) The date of the sale shall be so fixed that it shall be not less than twenty days from the date on which the notification is posted up as required by paragraph (1) of clause (*a*) and shall not fall on a holiday.

Date of the sale how to be fixed.

226. The amount of the decree, including the costs decreed, together with the costs incurred in order to the sale, may be paid into Court at any time before such tenure, under-tenure, or occupancy holding is put up for sale and the bidding commences. The sale shall not be stayed unless such amount is so paid into Court, or unless the decree-holder makes an application in writing to this effect on the ground that the decree has been satisfied out of Court. In any such case no application for any further execution of the decree shall be received. 204

Sale to be stayed only by payment into Court of amount of decree with costs; or by confession of satisfaction by decree-holder.

227. The amount of the decree and costs mentioned in section 226 may be paid into Court by any of the following persons, that is to say—

What persons may pay the amount of the decree and costs into Court, so as to stay the sale.

(*a*) by the judgment-debtor;

(*b*) by any one who alleges that he, and not the judgment-debtor, is the duly registered owner of the tenure, under-tenure, or occupancy holding notified for sale, and produces a copy of such register as is prescribed by section 46 in support of such allegation; 205

(*c*) by any one who has an interest in, or lien upon, such tenure, under-tenure, or occupancy holding;

(*d*) in the case of a tenure, under-tenure, or occupancy holding being notified for sale, by any one having an interest which would be endamaged by the sale of such tenure under-tenure, or occupancy holding free of incumbrances.

Person paying money into Court under clause (*c*) or (*d*) may sue defaulter for the same as money lent to him.

Any person who pays money into Court under clause (*c*) or (*d*) shall be entitled to sue for the amount so paid as money lent, and to recover the same from the person in consequence of whose default to pay rent or in consequence of whose wrongful act the tenure, under-tenure, or occupancy holding was notified for sale.

Sections 155 and 156 applicable in the case of certain tenures.

In the case of any such tenure as is described in section 147, the provisions of sections 155 and 156 shall further be applicable.

206 228. (*a*) Upon the day appointed for the sale, such tenure or under-tenure shall first be put up to auction, subject to incumbrances, that is to say, so as that the purchaser shall not be entitled to avoid any incumbrance created by the judgment-debtor or his predecessor in title; and, if the bidding reaches a sum sufficient to liquidate the amount of the decree and costs including the costs of sale, such tenure or under-tenure shall be sold subject to such incumbrances.

Tenure or undertenure to be first put up to sale subject to incumbrances, and sold, if bidding cover amount of decree and costs.

Explanation.—The term "incumbrances" in this section means and includes every incumbrance, lien, sub-lease, or subordinate interest which the defaulting holder of the tenure or under-tenure was by law competent to create in derogation of his own interest, and which was created by an instrument in writing duly registered, subject to this condition that a copy of such instrument have been served upon the person to whom the rent of such tenure or under-tenure is payable. Every registering officer shall, when required, cause any such copy to be served on any such person in the manner provided in Part VII of *The Indian Registration Act, 1877*, for the service of summons. In the case of incumbrances created before the commencement of this Act by instruments in writing duly registered under the law applicable thereto, such copy may be served at any time within six months after such commencement. The purchaser at a sale under this clause shall be entitled to proceed within one year after he has knowledge of the same to avoid and annul every incumbrance, lien, sub-lease, or subordinate interest other than those above defined and specified.

Meaning of "incumbrances."

(*b*) If the property to be sold be an occupancy holding, it shall, save in the cases excepted under the proviso of clause (*c*) of section 225, be put up to auction free of all incumbrances created by the judgment-debtor or by his predecessor in title.

Occupancy holding to be sold free of all incumbrances.

207 229. (*a*) If the bidding for a tenure or under-tenure does not reach a sum sufficient to liquidate the amount of the decree and costs as aforesaid, and if the decree-holder thereupon desires that such tenure or under-tenure shall be sold free of incumbrances, the officer holding the sale shall at his request withdraw such tenure or under-tenure from the auction, and shall publicly intimate that it will, unless the said amount be paid into Court, be put up to auction and sold free of incumbrances upon some future sale-day not less than fifteen or more than thirty days afterwards. A notification to the same effect shall be posted up with all convenient despatch on some conspicuous place upon the land of such tenure or under-tenure. Upon such latter mentioned sale-day such tenure or under-tenure shall be put up to auction and sold free of incumbrances.

If bidding does not cover amount of decree and costs, and decree-holder desires a sale free of incumbrances, such sale may be ordered upon an adjourned date.

(*b*) If no bid is made for such tenure or under-tenure when put up to auction under clause (*a*) of this section, or if no bid is made for an occupancy holding when put up to auction under clause (*b*) of section 228, the decree-holder shall be required to bid, and, if he refuses to do so, he shall not be entitled to proceed to execute the decree against the person or other property, moveable or immoveable, of the judgment-debtor.

If no bid, decree-holder to be required to bid.

230. The following rules shall be applicable to every sale made under section 228 or section 229:—

Rules applicable to sales under section 228 or section 229.

(1) The sale shall be by auction upon the day 208
or adjourned day appointed and notified as provided in section 225, or clause (*a*) of section 229, or, if this be not convenient, upon the following open day. The decree-holder and all persons other than the defaulter may bid.

(2) The tenure, under-tenure, or occupancy holding shall be knocked down to the highest bidder, and he shall be required to deposit immediately twenty-five per centum of the amount of his bid. In default of such deposit, the tenure, under-tenure, or occupancy holding shall be put up again and sold forthwith upon the same day, or, if this be not convenient, upon the following open day; and if the price realized is less than the amount bid by the person who failed to deposit twenty-five per centum of his bid, the difference may be recovered from such person under the law for enforcing the payment of money in satisfaction of a decree for arrears of rent.

(3) The balance of the purchase-money shall be paid up before sunset of the eighth day from that on which the sale took place, such sale-day being reckoned as one of the eight, or, if the eighth day be a holiday, then on the first open day. If such balance be not so paid, the deposit shall be forfeited to Government; the tenure, under-tenure, or occupancy holding shall be re-sold under clauses (1) and (2); the purchaser, who failed to make good the balance as aforesaid, shall forfeit all claim to such tenure, under-tenure, or occupancy holding, or to any part of the sum for which it may be subsequently sold; and, if such sum be less than the price bid by such purchaser, the difference may be recovered from him under the law for enforcing the payment of money in satisfaction of a decree for arrears of rent.

231. (*a*) When the whole of the purchase- 209
money has been paid, the Court shall confirm the sale, if there be no valid reason to the contrary; and shall grant a certificate stating the name of the person who at the time of sale is declared to be the

Sale to be confirmed when price paid. Certificate to be given to the purchaser. Officer to be deputed to put him in possession.

purchaser, and the date of such sale. Such purchaser shall, if required, produce and show such certificate when applying for registration under the provisions of section 37. If the purchaser makes application to such effect, and if he deposits the necessary costs, the Court shall depute an officer to put him in possession of the tenure, under-tenure, or occupancy holding, and to notify the fact of the purchase to the ryots and other persons whom it may concern.

Benami purchaser not recognized.

(*a*) The provisions of section 317 of *The Code of Civil Procedure* shall apply to every certified purchaser under clause (*a*).

210 **232.** The person who purchases a tenure or under-tenure under the provisions of clause (*a*) of section 229 shall be entitled to proceed within one year to avoid and annul all incumbrances imposed thereupon by any holder thereof, his representatives, or assignees, unless, in the case of incumbrances allowed by law, the right of making the same was expressly granted by the written engagement under which the holder was originally let into possession, or by the subsequent written authority of the person so letting into possession, his representatives, or assignees:

Purchaser under clause (*a*) of section 229 to acquire tenure or under-tenure free of all incumbrances not made under written authority of landlord.

provided that no such purchaser may eject any ryot having a right of occupancy, or cancel *bonâ fide* engagements made with such ryots except it be proved in a regular suit brought by such purchaser for the adjustment of the rent, that a higher rent would have been fairly demandable at the time when such engagements were contracted:

Proviso. Ryots having rights of occupancy may not be ejected.

provided also that no such incumbrances may be avoided in any case in which the purchaser is the judgment-debtor or a person acting in fraudulent collusion with him for the purpose of disencumbering the tenure or under-tenure.

Incumbrances may not be avoided, if judgment-debtor or person colluding with him purchase.

The person who purchases an occupancy holding under the provisions of clause (*b*) of section 228 shall acquire the same free of all incumbrances created by the former holder or his predecessors in title.

Occupancy holding to be acquired free of all incumbrances.

Subject to these provisions, any such purchaser shall be entitled to proceed under the provisions of this Act to enhance the rent of the ryots holding land in the tenure, under-tenure, or occupancy holding purchased by him; but no ryot shall be liable to ejectment otherwise than as provided in this Act.

Purchaser may enhance rents according to law; but may not eject save as provided in this Act.

233. The following rules shall be observed in disposing of the proceeds of the sale, that is to say—

Rules for disposal of the sale proceeds.

211 (1) There shall first be paid to the decree-holder the costs incurred by him in bringing the tenure, under-tenure, or occupancy holding to sale.

Cost of sale to be paid first.

(2) There shall in the next place be paid to the decree-holder the amount due to him under the decree, in execution of which the sale was made.

Amount due under the decree to be next satisfied.

(3) If there remains a balance after these sums have been liquidated, there shall be paid to the decree-holder therefrom any rent which may have become due to him for such tenure, under-tenure, or occupancy holding after the date upon which the latest arrear recovered by the decree became due: provided that the decree-holder shall not under this rule recover any rent which he might have included in the suit in which he obtained such decree: and provided also that in no case shall he obtain rent for more than six months after the date of the final decree. If the judgment-debtor dispute the decree-holder's right to receive such rent, the Court shall determine such dispute, and such determination shall have the force of a decree.

If balance remains, rent which fell due after the arrears recovered by the decree may be paid therefrom.

(4) If there remains a balance after the liquidation of the rent mentioned in clause 3, such balance shall be paid to the judgment-debtor upon his application.

Balance, if any, after liquidating such rent, to be paid to the judgment-debtor.

234. (*a*) The judgment-debtor may apply to the Court to set aside the sale on the ground that there was a material irregularity in publishing or conducting it, and that he has sustained substantial injury by reason of such irregularity: and the Court may set aside such sale, if material irregularity and such substantial injury are proved, and not otherwise. *212*

Sale may be set aside only if material irregularity and substantial injury are proved.

(*b*) In any case in which a sale is ordered to be set aside, the order shall direct that the purchase-money be refunded to the purchaser with or without interest, as the Court in its discretion may see fit, and such order may be enforced by the Court as a decree for money against any person into whose hands such purchase-money or any portion thereof may have passed, if such person have been served with notice of the application made under clause (*a*).

Order setting aside sale to direct refund of the purchase-money, and may be enforced as a money decree.

(*c*) If such purchaser has received possession of the tenure, under-tenure, or occupancy holding, the Court may take an account of any rent paid by him to the landlord of such tenure, under-tenure, or occupancy holding, and also of any rents or profits received by him, and may make an order directing the payment of any balance found thereupon to be due to the person entitled to receive the same. Such order shall have the force of a decree: provided that the taking of such account shall not be permitted to delay the restoration of the judgment-debtor to possession.

When auction-purchaser has obtained possession, Court may take an account.

235. In the following cases, that is to say— *213*

(1) when a tenure, under-tenure, or occupancy holding has been sold in execution of a decree for arrears of rent due in respect thereof, and the amount of such decree has not been satisfied by the proceeds of such sale.

Cases in which decree may be enforced by attachment and sale of moveable and immoveable property, and by arrest and imprisonment of judgment-debtor.

(2) when a decree has been made for arrears of rent due in respect of land not forming a tenure, under-tenure, or occupancy holding.

(3) when a decree has been made for damages on account of the illegal exaction of rent or cesses, or on account of the refusal of receipts.

(4) when a decree has been made for costs: the decree may be enforced by any or all of the following methods, that is to say—(*a*) by the attachment and sale of the moveable property of the judgment-debtor; (*b*) by the attachment and sale of the immoveable property of the judgment-debtor; (*c*) by the arrest and imprisonment of the judgment-debtor.

Attachment and sale of Moveable and Immoveable Property.

Provisions of *The Code of Civil Procedure* as to attachment and sale of moveable and immoveable property applicable to the execution of decrees in suits instituted and decided under this chapter.

236. The following sections of *The Code of Civil Procedure* shall be applicable to the execution of decrees in suits instituted and decided under the provisions of this chapter, that is to say—

Section 236, as to application for attachment of immoveable property being accompanied with inventory;

Section 237 as to particulars when application is for attachment of immoveable property;

214 Section 238, as to when application must be accompanied by extract from Collector's Register;

So much of section 245 as provides that, in case of a decree for money, the value of the property attached shall, as nearly as may be, correspond with the amount of the decree;

Section 266, as to property liable to attachment and sale in execution of a decree;

Section 267, as to power of Court to summon and examine persons as to property liable to be seized;

Section 268, as to attachment of debt, share, and other property not in possession of judgment-debtor;

Section 269, as to attachment of moveable property in possession of the defendant; and rules for maintenance of attached live stock;

Section 270, as to attachment of negotiable instruments;

Section 271, as to seizure of property in houses and zenanas;

Section 272, as to attachment of property deposited in Court or with Government Officer;

Section 273, as to attachment of decree for money; and of other decrees; and as to decree-holders giving information;

Section 274, as to attachment of immoveable property;

Section 275, as to withdrawal of attchment after satisfaction of decree;

Section 276, as to private alienation of property after attachment being void;

Section 277, as to Court directing coin or currency notes attached to be paid to party entitled;

Section 278, as to investigation of claims to, and objections to attachment of, attached property, and postponement of sale;

Section 279, as to evidence to be adduced by claimant;

Section 280, as to release of property from attachment;

Section 281, as to disallowance of claim to release of property attached;

Section 282, as to continuance of attachment subject to claim of incumbrancer;

Section 283, as to saving of suits to establish right to attached property;

Section 284, as to power of Court to order property attached to be sold, and proceeds to be paid to person entitled;

Section 285, as to property attached in execution of decrees of several Courts;

Section 286, as to sales by whom conducted and how made;

Section 287, as to proclamation of sales by public auction;

Section 288, as to indemnity of Judges;

Section 289, as to the mode of making proclamation;

Section 290, as to the time of sale;

Section 291, as to power to adjourn sale, and stop sale on tender of debt and costs, or on proof of payment;

Section 292, as to officers concerned in execution sales not bidding for, or buying, property sold;

Section 293, as to defaulting purchaser being answerable for loss by re-sale;

Section 294, as to decree-holder not bidding for or buying property without permission; and as to amount of decree being taken as payment when he purchases;

Section 295, as to proceeds of execution-sale being divided rateably amongst decree-holders, with proviso where property is sold subject to mortgage;

Section 296, as to rules concerning negotiable securities and shares in Public Companies;

Section 297, as to payment for moveable property sold;

Section 298, as to sale of moveable property not being vitiated by irregularity, but person injured being competent to sue;

Section 299, as to delivery of moveable property actually seized to purchaser;

Section 300, as to delivery of moveable property to which judgment-debtor is entitled subject to lien;

Section 301, as to delivery of debts and of shares in Public Companies;

Section 302, as to transfer of negotiable instruments and shares;

Section 303, as to vesting order in case of other immoveable property;

Section 304, as to sales of immoveable property;

Section 306, as to deposit by purchaser of immoveable property;

Section 307, as to time for payment in full;

Section 308, as to procedure in default of payment;

Section 309, as to notification on re-sale of immoveable property;

Section 310, as to co-sharer of a share of undivided immoveable property having preference in bidding;

Section 311, as to sale of immoveable property not being set aside unless there be (1) material irregularity and (2) substantial injury;

Section 312, as to effect of objection being allowed or disallowed;

Section 313, as to power to apply to set aside the sale;

Section 314, as to confirmation of sale;

Section 315, as to return of price to purchaser, if sale be set aside;

Section 316, as to certificate to purchaser of immoveable property;

Section 317, as to benami purchaser not being recognized;

Section 318, as to delivery of immoveable property in the occupancy of judgment-debtor;

Section 319, as to delivery of immoveable property in the occupancy of a tenant;

Section 326, as to Court having power to authorize Collector to provide for satisfaction of decree otherwise than by sale of immoveable property;

Section 327, as to local Government making rules for sales of land in execution of decrees for money;

Section 328, as to procedure in case of obstruction to execution of decree;

Section 329, as to procedure in case of obstruction by judgment-debtor or at his instigation;

Section 330, as to procedure when obstruction continues;

Section 331, as to procedure in case of obstruction in good faith by claimant other than judgment-debtor;

Section 332, as to procedure in case of person dispossessed of property disputing right of decree-holder to be put into possession;

Section 333, as to orders passed under sections 331 and 332 having the force of decrees and being subject to appeal;

Section 334, as to resisting or obstructing purchasers in obtaining possession of immoveable property; and

Section 335, as to obstruction by a claimant other than defendant.

Of Arrest and Imprisonment.

215 **237.** If the judgment-debtor, having given security for his appearance under the provisions of section 199, is present before the Court, or if he has been committed to jail under the provisions of the same section, the Court may, upon the application of the decree-holder and upon his depositing subsistence-money in accordance with the provisions of section 339 of *The Civil Code of Procedure*, make an order that such judgment-debtor, unless he at once pays the amount of the decree, be committed to, or detained in, jail. If no such application is made, and the judgment-debtor is in jail, he shall be released upon the expiry of three clear days after judgment being pronounced.

Order for committing to, or detaining in, jail, a judgment debtor, arrested before judgment, who fails to satisfy the decree.

238. If the judgment-debtor, having given security for his appearance, is not present when judgment is pronounced, and the surety fails to deliver him into custody when required so to do, process of execution may be taken out against the surety in the same manner as if a decree for the amount due by the debtor had been passed against such surety. 216

Execution may be had against surety, who fails to deliver judgment-debtor into custody.

239. The provisions of the following sections of *The Code of Civil Procedure* shall be applicable to the execution of decrees in suits instituted and decided under the provisions of this chapter, that is to say—

Certain sections of *The Code of Civil Procedure* as to arrest and imprisonment applicable to the execution of decrees under this chapter.

Section 336, as to place of judgment-debtor's imprisonment, arrest in houses, and release upon payment;

Section 337, as to warrant of arrest directing judgment-debtor to be brought up;

Section 338, as to scales of subsistence allowances;

Section 339, as to deposit of judgment-debtor's subsistence-money;

Section 340, as to subsistence money being added to the amount of the decree; 217

Section 341, as to the release of the judgment-debtor;

Section 342, as to the term of imprisonment; and

Section 343 as to endorsements on warrants.

Miscellaneous Provisions of The Code of Civil Procedure, applicable to Suits under this Chapter.

240. The following chapters and sections of *The Code of Civil Procedure* shall be applicable to all suits instituted and tried under the provisions of this chapter that is to say—

Certain chapters and sections of *The Code of Civil Procedure* applicable generally to suits under this chapter.

Chapter XX, as to insolvent Judgment-Debtors;

Chapter XXI, as to the Death, Marriage, and Insolvency of Parties; 218

Chapter XXII, as to the Withdrawal and Adjustment of Suits;

Chapter XXV, as to Commissions, except section 396;

Chapter XXVII, as to suits by or against Government or Public Officers;

Chapter XXIX, as to suits by and against Corporations and Companies;

Chapter XXX, as to suits by and against Trustees, Executors, and Administrators;

Chapter XXXI, as to suits by and against Minors and Persons of Unsound Mind;

Chapter XXXII, as to suits by and against Military Men; and

Chapter XLIX, Miscellaneous, Sections 610, 641, 642, 643, 645, 648, 651, and 652.

Of Appeals.

219 **241.** Subject to the provisions of section 173 of this Act, the provisions of Chapter XLI of *The Code of Civil Procedure* as to appeals from Original Decrees, and the provisions of Chapter XLII of the same Code as to appeals from Appellate Decrees, shall be applicable to all suits instituted and decided under the provisions of this chapter.

Appeals from Original and Appellate Decrees to be governed by the provisions of *The Code of Civil Procedure*

220 **242.** Notwithstanding anything contained in section 241, no appeal shall lie in any suit brought for arrears of rent in which the amount claimed does not exceed fifty rupees, and in which no question of right to enhance or vary the rent of a tenant has been determined, when such suit has been tried and decided by a Munsif or other Judicial Officer specially empowered by the Lieutenant-Governor of Bengal to exercise final jurisdiction under this section. The District Judge may call for the record of any case so decided, and, if he is satisfied that a failure of justice has been caused by a substantial error, defect, or irregularity in the proceedings or in the decision, he may pass such orders as shall to him appear proper. Such orders shall be final.

No appeal in certain suits for arrears of rent in which the amount claimed does not exceed fifty rupees.

District Judge to have power of revision.

221 **243.** The provisions of Chapter XLIII of *The Code of Civil Procedure* as to appeals from orders shall be applicable to all suits instituted and tried under the provisions of this Chapter: provided that no appeal shall lie against the order of a District or Additional Judge in any such suit as is mentioned in section 242.

Appeals from orders governed by the provisions of *The Code of Civil Procedure*. Proviso.

Review of Judgment.

222 **244.** Subject to the provisions of section 174 of this Act, the provisions of Chapter XLVII of *The Code of Civil Procedure* as to review of judgment shall be applicable to all suits instituted and tried under the provisions of this chapter.

Review of judgment to be regulated by the provisions of *The Code of Civil Procedure*.

245. The provisions of section 13 of *The Code of Civil Procedure* shall be applicable to all suits instituted and tried under the provisions of this chapter: provided that the decision in any such suit of a question concerning the title to, or any interest in, immoveable property shall not be a bar to the trial of the same question in any suit tried under *The Code of Civil Procedure*, and not under the provisions of this chapter.

Res Judicata: proviso.

246. If in any case a Civil Court is satisfied that a party is unable to pay the cost of any necessary process in any suit instituted or pending under this chapter, it may direct such process to be served free of charge.

Discretion to issue process free of charge.

247. Anything which may be done by a Pleader under the provisions of this chapter or under any of the provisions of *The Code of Civil Procedure* mentioned herein, may be done in any case instituted in the Court of a Munsif by any such Revenue Agent as is mentioned in the proviso to section 10 of Act XVIII of 1879.

Revenue Agent may in Munsif's Court do any act which may be done by a Pleader.

THE FIRST SCHEDULE.

(*See Section 2.*)

Number and year.	Subject of Act.	Extent of repeal.
	Regulations of the Bengal Code.	
VIII of 1793 ...	A Regulation for re-enacting, with modifications and amendments, the rules for the Decennial Settlement of the Public Revenue payable from the lands of zemindars, independent talukdars, and other actual proprietors of land in Bengal, Behar, and Orissa, passed for those Provinces respectively on the 18th September 1789, the 25th November 1789, and the 10th February 1790, and subsequent dates.	Sections 51, 52, 53, 54, 55, 64, and 65.
XII of 1805	A Regulation for the settlement and collection of the Public Revenue in the zillah of Cuttack, including the pergunnahs of Puttespore, Kummardichour, and Bagrae, at present included in the zillah of Midnapore.	Section 7.
V of 1812	A Regulation for amending some of the rules at present in force for the collection of the Land Revenue.	Sections 2, 3, 4, 26, and 27.
XVIII of 1812 ...	A Regulation for explaining section 2, Regulation V, 1812, and rescinding sections 3 and 4, Regulation XLIV, 1793, and sections 3 and 4, Regulation L, 1795, and enacting other rules in lieu thereof.	Preamble and sections 2 and 3.

Number and year.	Subject of Act.	Extent of repeal.
VIII of 1819 ...	A Regulation to declare the validity of certain Tenures and to define the relative rights of Zemindars and Patni Talukdars; also to establish a process for the sale of such Taluks in satisfaction of the zemindar's demand of rent, and to explain and modify other parts of the system established for the collection of rents generally throughout Bengal.	The whole Regulation.
I of 1820 ...	A Regulation for providing that all sales of certain Taluks, made answerable by sale for arrears of the zemindar's rent, shall be conducted in the mode prescribed by Regulation VIII, 1819, for the sales therein described.	The whole Regulation.
XI of 1825 ...	A Regulation for declaring the rules to be observed in determining claims to lands gained by alluvion or by dereliction of a river or the sea.	In clause 1 of section 4, from and including the words "nor if annexed to a subordinate tenure" to the end of the clause.
	Acts of the Bengal Council.	
VI of 1862 ...	An Act to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal).	The whole Act.
VIII of 1865 ...	An Act to amend the law for the sale of such under-tenures as by the title-deeds or established usage of the country are transferable by sale or otherwise for the recovery of rent due in respect thereof.	The whole Act.
IV of 1867 .	An Act to explain and amend Act VI of 1862, passed by the Lieutenant-Governor of Bengal in Council, and to give validity to certain judgments.	The whole Act.
VIII of 1869	An Act to amend the Procedure in suits between Landlords and Tenants.	The whole Act.
	Acts of the Governor General in Council.	
XXV of 1850 ...	An Act for the forfeiture to Government of deposits made on incomplete sales of land under Regulation VIII, 1819, and Act IV, 1846.	So much as is unrepealed.
XXXIII of 1850	An Act for amending the forms necessary for the sale of Patni Tenures in Bengal	The whole Act.
VI of 1853	An Act relating to summary suits for arrears of rent, to sales of Patni Taluks and other saleable tenures, and to sales of land in satisfaction of summary decrees for rent.	The whole Act.
X of 1859	An Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.	The whole Act.

THE SECOND SCHEDULE.

(See Section 50.)

FORM A.

I, A. B., &c., do declare that I [*or C. D., when the tenant A. B. is not personally cognizant*] am in possession of [*describe the tenure, under-tenure, holding, or land, giving the area and boundaries when possible*] the annual rent of which is [*state amount*], and that such rent was payable to E. F. up to [*date of last payment made*], and that on the present date there is due in respect of such, [*tenure, under-tenure, holding, or land*], the sum of , inclusive of interest, and that no other or further sum is due in respect of such [*tenure, under-tenure, holding, or land*], and I do further declare that

[*in case (a) of section 50*]

I desire to deposit my rent, as I believe that the said E. F. will not be willing to receive the same, and to grant me a receipt. *Or*

[*in case (b) of section 50*]

That the said E. F. is dead, and that G. H., I. J., and K. L. are his heirs and are coparceners, and they have not appointed a common manager, nor has any such common manager been appointed by the District Judge, and that they were not ready to give me, nor could I obtain from them, their joint receipt for the said sum of *Or*

[*in case (c) of section 50*]

That the said E. F. is dead, and his estate is claimed by his widow G. H., and also by one I. J., and I [*or* C. D.] am [or is] in reasonable doubt as to which of the said two claimants is entitled to the rent.

THE THIRD SCHEDULE.

(See Section 98.)

PART I.—*Suits.*

	Description of Suit.	Period of Limitation	Time from which period begins to run.
1.	Under clause (4) of section 162 by an under-tenure-holder for price of interest avoided by sale, or for compensation.	Two months ...	The date of the sale.
2.	When a deposit of rent has been made under the provisions of section 50, for the recovery of arrears of rent which fell due before the date of such deposit.	Six months ..	The date of service of notice of the deposit under section 53.
3.	Under clause (8) of section 72 to enforce a forfeiture for disclaimer.	Three months ...	The date of the disclaimer.
4.	For damages on account of the illegal exaction of rent.	Six months ...	The date of the illegal exaction.
5.	For damages on account of the extortion of rent by confinement or other duress.	Six months	The date of the extortion.
6.	For damages on account of the excessive demand of rent.	Six months	The date of the excessive demand.
7.	For damages on account of the illegal exaction of any unauthorised cess or impost.	Six months ...	The date of the illegal exaction.
8.	For damages on account of the refusal of receipts for rent.	Six months ..	The date of the refusal.
9	For abatement of rent of tenure-holder, under-tenure-holder, or ryot holding at fixed rates.	One year	The date of the commencement of the cause which entitles to abatement.
10.	For abatement of the rent of a ryot having a right of occupancy on the ground of the area of his holding having been diminished by diluvion.	One year	The date of the diminution, or, where it is gradual, the completion thereof. A suit may be instituted at any time while such gradual diminution is going on.

PART I —*Suits*—continued.

Description of Suit.	Period of Limitation.	Time from which period begins to run
11. For abatement of the rent of a ryot having a right of occupancy on the ground that quantity of land has been proved by measurement to be less than quantity for which rent previously payable.	One year ..	The date of the measurement
12. For abatement of the rent of a ryot having a right of occupancy, on the ground that the value of the produce has been decreased by any cause beyond his power.	Three years	The date of the operation of such cause, *or* the date of the fall in price.
13. For abatement of the rent of a ryot having a right of occupancy, on the ground that the productive powers of the land have been decreased by any cause beyond his power.	Three years ..	When the operation of such cause becomes known.
14. To eject any tenure-holder, under-tenure-holder, or ryot on account of any breach of a condition in respect of which there is a contract expressly providing that ejectment shall be the penalty of such breach.	One year	The date of the breach.
15 For damages on account of illegal distraint or sale under section 121 or section 122.	One year ...	The date of the distraint or sale, as the case may be.
16. By the purchaser of an estate, tenure, or under-tenure, sold for arrears of revenue or rent, to avoid a tenure, under-tenure, or other tenancy or subordinate interest in any case in which he is entitled to avoid the same.	One year ..	The date after confirmation of the sale upon which such purchaser first has knowledge of the existence of such tenure, under-tenure, or other tenancy or subordinate interest.
17. By a ryot against his landlord to recover the possession of a holding from which such ryot has been illegally ejected by such landlord, in any case not governed by section 9 of The Specific Relief Act, 1877.	One year ...	The date of dispossession.
18. By a transferee or successor against a landlord under section 44 to compel him to admit to registry a succession to, or transfer of a tenure, under-tenure, or occupancy holding.	One year ..	The date of the express or implied refusal.
19 For the recovery of arrears of rent when no deposit of rent has been made under the provisions of section 50.	Three years ...	The last day of the Bengali year, or the last day of the month of Jeyt of the Umli or Fusli or Willaiti year in which the arrear claimed became due.
20. By a tenure-holder or under-tenure-holder against his landlord to recover the possession of a tenure or under-tenure from which such tenure-holder or under-tenure-holder has been illegally ejected by such landlord, in any case not governed by section 9 of The Specific Relief Act, 1877.	Three years	The date of dispossession.
21. For determination of the conditions of tenancy under section 168.	At any time during the tenancy.	The commencement of the tenancy.
22. Under clause (*d*) of section 160, for damages on account of refusal to furnish a jumma-bandi.	One year	The date of the expressed or implied refusal.

PART I.—*Suits*—concluded.

Description of Suit.	Period of Limitation.	Time from which period begins to run.
23. For the recovery of money or papers in the hands of an agent, or to compel an agent to render an account under section 182 or 183.	At any time during the agency or within one year after the determination thereof.	The receipt of the money or papers by the agent.
24. Like suit where person having right to sue has, by means of fraud, been kept from knowledge of the receipt of any such money by the agent, or where a fraudulent account has been rendered by agent.	One year ...	The time when the fraud first became known to the person having the right to sue, provided that in no case shall there be allowed more than three years from the termination of the agency.
25. For apportionment of rent under section 55.	At any time during the tenancy.	

PART II.—*Appeals.*

Description of Appeal.	Period of Limitation.	Time from which period begins to run.
26. From any decree or order under this Act to the Court of a District Judge.	Thirty days ...	The date of the decree or order appealed against.
27. From any order of a Collector under this Act to the Commissioner.	Thirty days ...	The date of the order appealed against.

PART III.—*Applications.*

Description of Application.	Period of Limitation.	Time from which period begins to run.
28. Under clause (*a*) of section 284 to have a sale set aside.	Thirty days ...	The date of the confirmation of the sale.
29. Under clause (*c*), section 45, for an order directing a proprietor to receive security tendered by the transferee or devisee of a tenure.	Three months ...	The date of the express or implied rejection of such security.
30. By a purchaser under clause (*a*) of section 231 to be put in possession of a tenure, under-tenure, or occupancy holding purchased by him.	Three months ...	The date of the confirmation of the sale.
31. For the execution of a decree or order made under this Act, or any Act repealed by this Act, and not being a decree for a sum of money exceeding Rs. 500, exclusive of any interest which may have accrued after decree upon the sum decreed, but inclusive of the costs of executing such decree. When the judgment-debtor has by fraud or force prevented the execution of the decree within the three years, the court may allow a further period not exceeding one year.	Three years ...	(1) The date of the decree or order; or (2) where there has been an appeal, the date of the final decree or order of the Appellate Court; or (3) where there has been a review of judgment, the date of the decision passed on the review.
32. For the execution of a decree for a sum of money exceeding Rs. 500 calculated as in Article 31.	The time provided by The Indian Limitation Act, 1877.	As provided in The Indian Limitation Act, 1877.

APPENDIX I.

Memorandum on the History of the Rent Question in Bengal since the passing of Act X of 1859.

THE letter of the British Indian Association of the 18th April 1881, on the draft Rent Bill for Bengal, contains many statements which might be shown to be erroneous and misleading, but perhaps the most astounding of all is that contained in the words which are italicised in the following clause of paragraph 9:—

"It has been a received maxim in legislation that no change in law should be made unless there was an absolute and well-ascertained necessity for it; such necessity should be expressed by the general sense of the people, by a deeply and widely-felt want, by some administrative difficulty or by some exigencies in the social economy of the country. *No such conditions, however, exist for a change in the substantive Rent Law of Bengal. Until the Government had led the way as it were by the appointment of the Rent Commission not a voice had been heard calling for a change in the law. No want or wish was expressed for such a change Not a single instance occurred of the administrative machinery coming to a dead lock in the absence of such a change Nor has the progress of social economy received any check from want of such a change* If the Government had any doubt on these points, it might have instituted a proper and organized local enquiry by taking the evidence of competent persons on this subject. Instead of appointing a Commission to amend the Rent Law, it might have charged it to enquire into and report on the necessity for the desired amendment of the law In the United Kingdom, as indeed in all other civilised countries, such enquiry generally precedes legislation, but *unhappily as regards this momentous land question of Bengal, which affects millions of people, and interests hundreds of millions of sterling worth, execution has preceded enquiry, a foregone conclusion has taken the place of unbiassed investigation, assumption that of logical deduction.*"

2. The allegation that until the appointment of the Rent Commission no want of or wish for any change in the substantive Rent Law had anywhere been felt or expressed, is indeed immediately and amply contradicted in the following paragraphs of the same letter, and especially in the extract from Mr. Mackenzie's speech in Council quoted and adopted in paragraph 10; but it may be useful and serve to dispel misapprehension if a somewhat detailed account is given of the evidence which has convinced successive Governments that an amendment of the substantive Rent Law has long been necessary; and if it is shown that in this conclusion all classes of the community in Bengal, official and non-official, and especially the British Indian Association themselves, have repeatedly concurred.

3. The portions of the existing Rent Law regarding which most difficulty has arisen in practice are the sections defining the rights of ryots having rights of occupancy, and the conditions under which rents of such ryots can be enhanced by their landlords. It will perhaps serve to account for much of the difficulty that has been felt in construing and applying those sections of Act X of 1859, if it is remembered that that measure was originally a Bill designed only to amend the law for the *recovery* of rent in the Bengal Presidency, or, as it was put at the time, to provide for the "revision and consolidation of the distraints and summary suit laws which (then) comprised the law for the recovery of rents." It was not intended to be in any complete sense a codification of the law of landlord and tenant. The substantive portions of the Act were not designed to create or limit rights. They were meant to be merely declaratory of the law as it stood. As explained by the Mover (Mr. Currie) in Council, on the 10th October 1857:—

"In enlarging the jurisdiction of the Collectors for the trial of these (rent) cases, he has thought it necessary to re-enact in a clear and distinct form those provisions of the existing law relative to the respective rights of landlord and tenant with which they would principally have to deal in the discharge of their duty."

4. Unfortunately, 'the clear and distinct form,' in which Mr. Currie presented the legal position of the Bengal ryot in his original Bill, was marred by ill considered amendment in the subsequent stages of that measure. Had the cardinal importance of the substantive sections of the Bill been realized, we may be sure that the impossibility of legislating for the permanently-settled districts of Bengal, and the temporarily-settled districts of the North-Western Provinces, in one and the same enactment would have been seen; and the attempt abandoned But the attention of every one was fixed mainly upon the question of *procedure*, and the mischief was done without its results being even suspected. In order to the correct understanding

of the position, and of the measures now proposed to be taken by the Government of Bengal for remedying the evil done, it is necessary to recapitulate here at some length the history of the sections in question. Sections 3, 4, and 5 of the original Bill were as follows :—

"III. Hereditary ryots holding land at fixed rates of rent are entitled to receive pottahs at those rates. All other ryots and cultivators of land are entitled to receive pottahs according to the rates of rent for the time being established in the pergunnah in which the land is situate, for land of the same description and quality, or if there be no known and recognized pergunnah rates, according to the customary rates payable for land of a similar description in the places adjacent. The above rules are applicable not only to the first grant of pottahs, but also to the renewal (where right of renewal exists) of pottahs which may expire or which may become cancelled in consequence of the sale of the tenure or estate in which the land is situate for arrears of rent or revenue.

Pottahs of hereditary ryots and of other cultivators.

"IV. Every resident ryot and cultivator has a right of occupancy in the land held or cultivated by him, whether it be held under pottah or not, so long as he pays the rent payable on account of the same; but this rule does not apply to khamar, nijote, or sir land belonging to the proprietor of the estate or tenure and leased for a term or year by year to a resident cultivator, nor (as respects the actual cultivator) to lands sub-let to a resident cultivator by a ryot having a right of occupancy.

Right of occupancy of resident ryot or cultivator.

"V. Nothing contained in either of the two last preceding sections shall be held to affect the terms of any written contract for the payment of specific rates of rent, nor of any contract entered into between a landholder and a resident ryot or cultivator for the clearing and cultivation of waste land, or for the cultivation of land not previously in the occupation of such ryot or cultivator, when by such contract conditions of occupancy have been agreed on between the parties, or a right of re-entry has been expressly reserved to the landholder. Resident ryots cultivating land not previously in their occupancy without a pottah or other instrument in writing from the proprietor of the estate or tenure in which the land is situate, shall not acquire a right of occupancy in such land until rent shall have been paid by them for the same to the said proprietor for a period of three years."

Saving of terms of written contracts.

"These sections" (said Mr. Currie) "contain nothing more than what had been the law since the time of the Permanent Settlement; but under that law the only remedy open to the ryot was by a regular suit in the Civil Court, and to refer a poor cultivator to a regular suit against his landlord, under the present practice of the courts, was almost tantamount to refusing him any remedy at all." The true object of the Bill was therefore, as already stated, to improve procedure, not to alter rights.

5. Nor were the changes made in the text of the Bill by the Select Committee designed to alter materially, far less to revolutionise, the customary rights of either landlords or tenants; or to introduce new theories of enhancement of rent. The following paragraphs from their report may here again be quoted :—

"The principles on which the Bill is founded have met with very general acceptance from the local officers of both the Revenue and Judicial Departments in the Lower Provinces as well as from the two Boards of Revenue and the Lieutenant-Governor of Bengal; and we have not thought it necessary to recommend any alteration of them.

"We have proposed many amendments in the details of the Bill, the principal of which we proceed to notice :—

"*Sections III and IV.*—We have thought it right to define more particularly the "hereditary ryots" who are to be recognized as having a right to hold lands at fixed rents. The laws in force allude to such a right as belonging to "kudeemee ryots," and these have generally been understood to be ryots who have held at the same rate of rent from a period of twelve years before the Permanent Settlement. We think that at this late date no one should be required to prove a title antecedent to the Permanent Settlement; and we have framed the amended section accordingly; adding a clause which will have the effect of placing a ryot who has held at the fixed rent for twenty years substantially in the position of a ryot who has held from the time of the Permanent Settlement, unless it be shown by the other party that the rent has varied intermediately.

"*Section V.*—The original Bill, following the phraseology of the existing law, declared ryots not holding at fixed rents entitled to pottahs "at pergunnah rates." This expression has been objected to on the ground that there are really no known pergunnah rates. The recognition of a right of occupancy in the ryot implies necessarily some limit to the discretion of the landholder in adjusting the rent of the person possessing such a right. There was a discussion on this subject between the Government of the North-Western Provinces, the Sudder Court, and the Board of Revenue, in 1850; and it was then apparently admitted that it was the acknowledged right of the ryot to hold at "*customary and fair** rate." We have adopted similar

* Mamoolee and Wajibee.

phrases, and in this section and sections XVII and XVIII have endeavoured to lay down rules by which the "fairness" of the rates may be ascertained.

"*Section VI.*—The laws in force speak of "*khundkasht* ryots" as possessing rights of occupancy, and in some places the word "*khundkasht*" seems to be considered as synonymous with "*resident.*"* "Resident's was therefore the word used in the original Bill. But it has been pointed out by the Western Board that residency is not always a condition of occupancy; and it appears that after much enquiry it was prescribed by an order of the Government of the North-Western Provinces in 1856, as most consistent with the general practice and recognized rights, that a holding of the same land for twelve years should be considered to give a right of occupancy. We have followed this precedent, and altered the section accordingly."

* Regulation LI, 1795, section X. Regulation VIII, 1819, section XI, clause 3, and section XVIII, clause 5.

These paragraphs indicate conclusively that the Select Committee had no wish to alter the status or rights of the cultivating class; and the sections were passed in the shape recommended by it.

6. The general question of rent enhancement was not discussed by the Select Committee, and attracted almost no attention while the Bill was under consideration. Some argument did indeed take place in Council on the 9th April 1859 regarding section 17, in which the grounds of the enhancement are laid down thus:—

"17. No ryot having a right of occupancy shall be liable to an enhancement of the rent previously paid by him except on some one of the following grounds, namely:—

"(1) That the rate of rent paid by such ryots is below the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages in the places adjacent.

"(2) That the value of the produce or productive powers of the land have been increased otherwise than by the agency or at the expense of the ryot.

"(3) That the quantity of the land held by the ryot has been proved by measurement to be greater than the quantity for which rent has been previously paid by him."

Mr. Ricketts raised a discussion with reference to the first only of these grounds, urging that it would be difficult to determine what were lands of a similar description and with similar advantages. He proposed that, instead, the Collector should ascertain the market value of the average gross produce of the land, and declare two-fifths of that to be the rent payable, unless from any special circumstances making cultivation more than ordinarily expensive a lower rate were equitable. Rents once so fixed were to hold good for 12 years. Mr. Currie opposed the amendment as being more difficult to work than the proposal of the section, and because two-fifths of the gross produce was far too high a rent. Mr. Harrington opposed it also as laying down a hard-and-fast rule, while the intention was "*to leave it very much to the Collector to determine what rent should be paid in every case.*" Mr. Ricketts' proposal was therefore lost. (It is interesting to notice that what Mr. Harrington declared to be the 'intention' of Act X in 1859 in the matter of enhancement is exactly what the Government proposal of a "Table of Rates" comes to in 1881.) No discussion took place with reference to the principle of enhancement on the ground of increased value of produce, probably because this was meant only as a general guide to the Collector in the exercise of the discretion he was 'intended' to have. But in this clause lay the germ of all future trouble. As a distinct and self-contained 'ground of rent enhancement' the increased value of produce had never before been authoritatively recognized as between Bengal landlords and tenants. Rents in Bengal had, no doubt, been raised and re-settled from time to time, sometimes by *force majeure* on the part of the landlord, sometimes by mutual agreement; but in all such transactions the parties had been guided by customary rather than by economical considerations; and in every instance the *status* of the cultivator had been an important element in settling the terms of the bargain. The effect of the introduction of a uniform reference to the value of produce was to reduce all grades of ryots to the same dead level.

7. It was not, however, for some time after the passing of Act X of 1859 that landlords realized the possibilities of litigation and increased income opened up to them by the introduction into the Indian Land Law of this entirely novel principle of enhancement of rent with direct reference to the increased value of produce. A considerable amount of agrarian outrage, which prevailed in the metropolitan districts in 1861 and 1862, was in some quarters attributed to the working of the law in this and other respects; but there were

undoubtedly other causes there at work sufficient to account for such events, and it is not necessary to suppose that the effect of the new principle was manifest so soon. The first case of enhancement reported in the collection of decisions in Act X cases, compiled by the Board of Revenue for the guidance of officers, is the famous suit of Hills *versus* Ishwar Ghose, decided by Sir Barnes Peacock in the High Court on the 24th September 1862. In this case the Chief Justice boldly and uncompromisingly asserted the absolute applicability to Indian land rent of the strictest doctrines of political economy. The High Court "could not lay down any better rule for the guidance of the lower courts" than the abstract definitions of Mr. Malthus. The marginal note of the case runs thus:

"In a suit for enhancement of rent, on the ground specified in section 17 of Act X of 1859, that 'the value of the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the ryot,' the amount of the increased rent is not to be ascertained by establishing a proportion between the former rent and the old produce; but the absolute increased value of the produce being ascertained, the enhanced rent is to be arrived at by considering what part of such increased value ought to be apportioned to the tenant, as the produce of his capital, labour, &c., and what part of it is 'rent,' that is, as it has been defined (by Malthus) 'that portion of the value of the whole produce which remains to the owner of the land after all the outgoings belonging to its cultivation, of whatever kind, have been paid, including the profits of the capital employed, estimated according to the usual and ordinary rate of agricultural capital at the time being.'"

8. This decision was at once felt by every one acquainted with revenue law and history to be a fatal blow to the customary rights of the whole cultivating class in Bengal. It ignored the existence of any beneficial right of the ryot in the land other than that arising from the investment of his capital(!) and labour, and that too, although the evidence in the case showed that no single ryot in the neighbourhood, whether with or without rights of occupancy, was actually paying a rent such as the High Court declared the landlord was entitled to draw, or even as much as he ventured to claim. It cancelled avowedly all distinctions between ryots having rights of occupancy and mere tenants-at-will. "When an alteration in the rent is to be made in consequence of an increase in the value of the produce, the occupancy ryot" (said the Chief Justice) "is not entitled in strictness to have it fixed at a lower rate than that which a tenant not having a right of occupancy would give for it."

9. The case went back to the lower courts for the elaborate enquiry directed by the Chief Justice, and on the 2nd September 1863 the High Court in appeal examined minutely all the items of the accounts, allowing and disallowing what it held to be correct, and arriving in the end at conclusions entirely favourable to the landlord's demand, which was indeed far below what the High Court on the foregoing principle was prepared to give him. The course of the enquiry had, however, made it clear that it was impossible for the courts of the interior to work satisfactorily a system of enquiry so elaborate and intricate; and, in winding up his judgment on this occasion, the Chief Justice said:—

"It is not for us in this place to comment upon the acts of the Legislature, or to suggest amendment of the law. We have merely to administer it as we find it But we think we may fairly point to this case as an example of the difficulties which have been created by some of the provisions of Act X of 1859, and of the vast amount of litigation, harassing both the landowners and ryots, which must necessarily arise unless that Act be amended."

10. Thus, the first suggestion of radical amendment of the Act came from Sir Barnes Peacock, the strongest advocate of absolute proprietary right in Bengal whom the zemindars have yet been able to secure. It was perhaps fortunate for the peace of Bengal and the prosperity of its peasantry that this amendment was not undertaken at once under his inspiration, but was deferred until his interpretation of the law had been repudiated by all his brethren on the Bench, as it was viewed with dismay by every Revenue officer in the country. As a matter of fact, the landlord who won the suit in the High Court never dared attempt to execute his decree. (See Minute of the late Mr. Justice E. Jackson on amendment of Act X.)*

* On the 17th March 1864, on an application for a review of the former judgments in the case, Sir Barnes Peacock amplified and re-asserted his arguments against ryot-right, contending that, in view of the declarations of 1793 that the zemindars were 'proprietors' of the land, 'the conditions and rights of all ryots, whose tenures commenced after that date must be held to depend, not upon status, but upon contract, and on laws and regulations specifically enacted.' This extreme view is now generally recognized as erroneous, has been set aside by the High Court itself, and is most ably controverted in Mr O'Kinealy's memorandum (commencing at page 489 of volume II of the Rent Commission's Report and Appendices), to which reference should be made.

But it was not in Bengal only that difficulty was felt in applying the law. In 1863 the Revenue authorities of the North-West Provinces also began to agitate for the amendment of the Act in respect of the occupancy sections. It is noticed in the appendix of the Rent Commission's report that the provision of Act X, making a twelve-years' occupancy the test of possessory ryot-right, was introduced into the Act from a mistaken idea as to what the law and custom of the North-West Provinces really were. The Bill as originally framed had set forth correctly the custom of *Bengal*, which gave to every resident ryot a right of occupancy. But it had been represented to the Select Committee (as noticed in paragraph 5 above) that in the North-West Provinces residency was not an essential condition of this right, while a twelve-years' prescription was considered sufficient to establish it; and the law had accordingly been altered with the intention of enlarging the benefits to be conferred on the ryot class. The effect of this was, no doubt, to bring all the *paikasht* or non-resident ryots of Bengal into a much more favourable position than they had ever before held. But it at the same time lowered the status of all the resident ryots of that province (*i.e.*, of the majority of the cultivators), compelling *them* also in case of dispute to establish their right by positive proof of twelve years' holding in every single field, in lieu of being able to vindicate their position by a simple appeal to their *status* as resident ryots. It was now shown that the effect of the law in the North-West Provinces had been equally unfortunate. There too the rights of the ryots had formerly been settled by custom and status; and what the Select Committee had misconstrued into a general twelve-years' prescription was a local practice of allowing any ousted ryot who could show twelve-years' possession a summary process for recovery of his holding until his zemindar proved in the Civil Court that he was only a tenant-at-will. Act X had, it was found, reduced all customary rights to one uniform statutory standard, and the authorities of the North-West were now, some of them in favour of demanding a much longer term of prescription as the test of occupancy rights, and some of them in favour of repealing the positive provisions of section 6 of Act X, and leaving the matter to be settled as before according to local peculiarities and practice.

11. The question was referred to the Government of India, and the opinion of the Calcutta High Court was invited. Sir Barnes Peacock wrote a minute in which he put forward again his peculiarly English lawyer-like views of the high proprietary rights of zemindars and the liability of all ryots, not holding at fixed rents or rents assessable on fixed principles, to pay any rent a zemindar chooses to demand. But he made at the close the valuable suggestion that it should be declared "to avoid all doubt that Act X of 1859 was not intended to debar ryots from availing themselves of any right to which they can prove themselves to be legally entitled by custom or prescription." (This principle was, in fact, afterwards laid down authoritatively by the Chief Justice himself. See Field's Digest, Art. 2.)

12. The Lieutenant-Governor of the North-Western Provinces (Mr. Drummond), accepting Sir Barnes Peacock's views that the occupancy ryot had no privilege as regards his rent, expressed himself nevertheless opposed to any amendment of the law. He said—

"I think it must be obvious that, if the summary process by which a ryot of twelve years' standing was maintained in possession until the zemindar by regular suit proved him to be only a tenant-at-will was justifiable, and a satisfactory solution of the question; then the enactment of section 6 can scarcely be considered an objectionable innovation, except perhaps in so far as it may confer new rights upon mere tenants-at-will, and, as regards them, the landlord has the remedy in his own power by a resort to written contracts by which the accretion of any prescriptive right can be barred.

"This part of the question cannot be rightly argued from a purely English point of view, which rests upon the ground of a full proprietary title in the landlord. The zemindar, it must be remembered, even under the Permanent Settlement has not an absolute property in the soil; his tenure is subject to a rent charge, and the Government, who is the original proprietor, has an interest in the security and well-being of the ryot, inasmuch as, if he absconded through ill-treatment, the loss might eventually fall upon the Government, upon whose lands an impoverished estate might be returned, and this interest was specially guarded in the Regulations upon which the Permanent Settlement depends.

"The error committed in the enactment of Act X of 1859, I conceive to have been that of attempting uniform legislation on a social question which assumes a different aspect, not only in every province, but almost in every district of each province, according to local habits or customs, and which would have been much better left to adjust itself under the ordinary action of existing laws and of public opinion.

"The Act was avowedly one intended for the protection of the ryot, and the cry which has been raised against it has been altogether in the interest of the landholders; but I am informed by those qualified to judge that its effect in many districts of the North-Western Provinces has been wholesale enhancement of rents or ejectment of ryots who had a customary claim to occupancy, and who, under the law as it previously stood, would probably never have been molested.

"Admitting, however, a great deal of what is urged as to the imperfection of the Act, it seems to me that it would be a measure of very doubtful policy to allow of any further change. The worst part of the mischief which can fairly be attributed to it has already been experienced. It would be neither just nor politic to deprive the ryots of rights already conferred upon them, and further change would only create renewed excitement.

"All that seems to me necessary is the preparation of complete registers of all persons having any prescriptive right of occupancy, carefully prepared, village by village, as the settlements now in progress go on; and, as already observed, these registers would prove a sufficient guide for the decision of all future claims to enhancement."

It is important here to observe that no conclusive argument can be drawn from the circumstances of the temporarily-settled districts of the North-West to establish *any* proposition regarding ryots in Bengal. There is more analogy between the resident ryot of Bengal and the zemindar of the North-West, than between the ryot of the North-West and the ryot of Bengal. The ryot of the North-West corresponds indeed more nearly and generally to the *paikasht* or non-resident ryot of Bengal.

13. The position of the Bengal resident ryot was, for the first time since the passing of Act X, fairly discussed and elucidated in the minutes of the other Judges of the Calcutta High Court elicited by the reference of the Government of India, in which were foreshadowed the facts and arguments that were afterwards adopted by them *in curia* in what is known as the *Great Rent Case*. The Board of Revenue, Lower Provinces, were also consulted, and the minutes of the Members exposed clearly enough the mistakes that had been made if not in the law, at any rate in the judicial interpretation of its provisions.

14. It is not possible from the papers in the Bengal Office to trace all the steps in the correspondence, but it would seem that the question of amending the Act was dropped for a time in the hope that the Calcutta High Court would by its Full Bench shortly settle authoritatively the true meaning and construction of the law.

15. The Judgment of that Full Bench in the famous case of Thakooranee Dasee was delivered on the 19th June 1865. The following is the marginal summary of the ruling:—

"When there has been an increase in the value of the produce of land arising from an increase in prices, and the zemindar is entitled to a new kabuliat from an occupancy ryot at an enhanced rate at fair and equitable rates.

"*Held, per* TREVOR, J. (concurred in by the majority of the Court).—The words 'fair and equitable,' in s. 5, Act X of 1859, are to be construed as equivalent to the varying expressions pergunnah rates, rates paid for similar lands in the adjacent places, and rates fixed by the law and usage of the country,—all which expressions indicate that portion of the gross produce calculated in money to which the zemindar is entitled *under the custom of the country*; that, as the Legislature directs, that, in cases of dispute, the existing rent shall be considered fair and equitable until the contrary be shown, that rent is to be presumed, in all cases in which the presumption is not by the nature and express terms of the written contract rebutted, to be the customary rate, included in the terms 'pergunnah rates,' rates payable for similar lands in the places adjacent, and rates fixed by the law of the country; that in all cases in which the above presumption arises, and in which an adjustment of rent is requisite in consequence of a rise in the value of the produce caused simply by a rise of price, the method of proportion should be adopted—the former rent should bear to the enhanced rent the same proportion as the former value of the produce of the soil, calculated on an average of three or five years next before the date of the alleged rise in value, bears to its present value; that in all cases in which the above presumption is rebutted by the nature and express terms of the written contract, the re-adjustment should be formed on exactly the same principle as that on which the original written contract which is sought to be superseded was based; and that in cases in which it appears from the express terms of the contract that the rents then made payable by the tenant were below the ordinary rate paid for similar land in the places adjacent, in consequence of a covenant entered into by the ryot to cultivate indigo or other crops, the former rent must be corrected so as to represent the ordinary rate current at the period of the contract before it can be admitted to form a term in the calculation to be made according to the method of proportion above laid down.

"*Per* MACPHERSON, J.—The rule of proportion,—as the old value of produce is to the old rent, so is the present value of produce to the rent which ought now to be paid,—is the rule which should be adopted in the absence of any recently-adjusted pergunnah customary rates. Either party should be at liberty, in each case, to prove any special circumstances

tending to show that the application of the rule of proportion to that particular case would work injustice.

"*Per* PHEAR, J.—When the Collector is called upon in any given case to determine the rent which it is fair and equitable that the ryot should pay, he ought to enquire—

"*1st.*—Whether at the last antecedent period, when the arrangement between the parties (either then created or previously existing) was such as must, by reason of tacit acquiescence or otherwise, be taken to have been fair and equitable, that arrangement contained express stipulations as to rent; if so, then these stipulations, unless the reason for them is gone, should be followed in arriving at the rent for the new pottah.

"*2nd.*—If the Collector finds no express agreement to guide him, then he must ascertain whether the ryot is legally entitled by custom, based either on his personal *status*, or on the character of the land occupied by him, to any definite share of the produce of the land, or to any beneficial interest in it. If the ryot is so entitled, the rent must be adjusted accordingly.

"*3rd.*—If neither express agreement nor legal right in the ryot be found to have determined the amount of rent, the last arrangement must have been governed by some locally-prevailing custom, or the rent regulated, tacitly, according to some locally-prevailing rates; and in that case the custom ought to be complied with and the rates adhered to. The fair presumption will be in the absence of evidence, or unless a different foundation be actually shown, that the rate was originally based upon the principle of sharing the produce of the land between the ryot and zemindar in a fixed ratio. The result of applying this presumption would be that the new, fair and equitable rent would be the same proportionate part of the new produce that the old rent was of the old produce.

"In all cases the duration of the intended pottah must be taken into consideration as an element affecting the question of fairness and equity.

"*Per* NORMAN, J.—1. With respect to the rents of ryots having mere rights of occupancy, a zemindar is entitled to claim from his ryots such rents as are paid by the same class of ryots for land of a similar description and with similar advantages in places adjacent.

"2. If such rents are too low, and the zemindar simply alleges that the value of the produce has become increased, otherwise than by the agency or at the expense of the ryot, he shows an increase in the value of that which primarily belongs to the producer, to a proportion of which alone the zemindar is entitled. It is only necessary to give the zemindar an amount of rent which shall bear the same proportion to the old rent which the present price of the produce does to the former. It must be taken that the old rent was fair and equitable. It is for the zemindar to prove his case, and he must carry back his evidence, as nearly as he can to the time when the rent was fixed.

"3. If the rent consist partly of money and partly of services, or something equivalent to services, as an obligation to cultivate and supply indigo at a certain price, the value of such contract would have to be estimated and added to the old rent; and in such cases the aggregate value would form a term in the proportion.

"4. If a ryot is holding below the rates paid by his neighbours, and in consequence of the increase of the value of the produce, these rates are themselves too low, the zemindar may be entitled to the benefit of both grounds of enhancement in the same suit.

"5. The cost of cultivation, in the absence of evidence to the contrary, may be taken roughly to have increased in a ratio proportionate to that of the increased price of produce. But in exceptional cases it may be found that the particular crop for which the land is specially fitted, as cotton, or crops on land in the vicinity of a town, has greatly increased in value without any general equivalent rise in the price of labour or the cost of food. In such cases if the zemindar is not in a position to make out a case under the first clause, the increased profit may be divided between the zemindar and the tenant, as may appear reasonable under the special circumstances of the case; and in like manner any extraordinary increase in the cost of production may be proved by the ryot in answer to the claim for enhancement on the ground of enhanced price of produce.

"6. If the productive powers have increased from other causes, as in the case of lands protected from flooding by the embankments of the railway, without increase of outlay or labour by the tenant, the whole of such increase belongs to the zemindar, subject to any increased expenses which may be caused to the tenant by the collection or realization of the larger profit.

"*Per* PEACOCK, C. J. (*dissenting*).—The rule of proportion is not applicable. The rule laid in *Ishore Ghose* v. *James Hills* (1) should be followed.

"The definition of rent by Malthus in his Principles of Political Economy is the guide. Rent is 'that portion of the value of the whole produce which remains to the owner of the land after all the outgoings belonging to its cultivation of whatever kind have been paid, including the profits of the capital employed, estimated according to the usual and ordinary rate of agricultural capital at the time being.' In considering whether the whole of the increased value of the produce is to be added to the rent, the Court must be guided by all the circumstances of the case. He may take the old rent as a fair and equitable rent, with reference to the former value of the produce. He must take into consideration the circumstances under which the value of the produce has increased, and whether these circumstances are likely to continue. He must also consider whether the costs of production, including fair and reasonable wages for labour, and the ordinary rate of profits derived from agriculture in the neighbourhood have increased, and, if so, he must make a fair allowance on that account. It is only the net increase, or such part of the net increase, as will render the rent fair and equitable, that can be added to it.

"*By the whole Court.*—A, holding for twelve years, whether wholly before or wholly after, or partly before and partly after, the passing of the Act, entitles a ryot to a right of occupancy under Act X of 1859, section 6."

16. This decision, by which the landlord's claim to assess at his discretion the rents of an occupancy ryot was definitively set aside, was expected to settle all the difficulties surrounding the relations of landlords and occupancy ryots. It restored the latter to the beneficial position from which Sir Barnes Peacock's decision had ousted them, and it appeared to lay down a simple and equitable rule for enhancement of rent. It is not to be wondered at, therefore, that the question of amending Act X was shelved for a time. Act III (B.C.) of 1862 had supplemented it by certain local provisions required in Bengal, and the two Acts were left to work together, the Revenue Board in 1866 having indeed strongly urged that no fresh legislation should be hurried on; their opinion being that if ever the law were touched "it should be *only for the introduction of fundamental alterations of principles.*" To determine these, time and close observation of the working of the law were required. For three years or more the Revenue officers of Government were endeavouring to work out in practice the principle of the High Court's decision. Why that principle fails of easy application may be gathered from Sir Richard Temple's remarks quoted in paragraph 45 below. Generally speaking, the Revenue Courts gave reasonably enhanced rates to the landlords, and were perhaps less exacting than they ought to have been in the matter of proof of the grounds of enhancement. Their tendency was rather to effect a rough settlement between the parties than to manufacture an elaborate record

17. The work falling upon the executive officers of Government was now, however, yearly growing heavier; and complaints became common that the Deputy Collectors who had rent suits to try had no time left for other business. Accordingly in 1869 a Bill was introduced into the Bengal Legislative Council transferring the trial of rent suits from the Revenue to the ordinary Civil Courts, on the ground that the questions arising in such cases would be better dealt with by the regular Judicial officers than by Executive officers who had no special training for the work and had to give their attention to many other duties. In accepting the principle of the Bill, Baboo Romanath Tagore, who represented in Council the British Indian Association and the landholding interest, said he only looked on the Bill "as the precursor of other improvements which Act X of 1859 required at the hands of the Legislature," and "the time would, he hoped, come when the defects of Act X would be rectified" in the interest of the landlords. The landlords in 1869 had thus no doubt whatever that a revision of the substantive law as embodied in Act X was urgently required. A strong movement was made both by them, and by the friends of the ryots, in and out of Council to have the substantive portions of the law dealt with, as well as the question of jurisdiction; but the Government of Sir William Grey was not disposed to move in the matter, and the opportunity was for the time lost, and the Bill for transferring the disposal of rent suits to the Civil Courts became law as Act VIII (B.C.) of 1869. There is a general agreement that the result of the transfer of jurisdiction has been more favourable to the tenants than to the landlords, the Civil Courts requiring more clear and positive proof in matters of enhancement, and being also, it is alleged, less summary in the disposal of suits for arrears of rent than were the Courts of Deputy Collectors and other Revenue officers.

18. Meantime the development of the jute trade had begun to pour a stream of wealth into the Eastern Districts of Bengal, districts where the ryots had, as a rule, shown themselves able to hold their own against their landlords; partly perhaps owing to the fact that many of the cultivators were Mahomedans, and not a few of them Ferazis, a sect always ready to combine and resist interference; and partly because in extensive tracts they were really descendants of reclaiming settlers, who had obtained favourable terms originally from the zemindars and had protected themselves by deeds and leases to an extent unusual in the other districts of Bengal. The high prices now obtained for jute and other staples enabled many of these ryots, by the offer of bonuses, to tempt improvident landlords into granting them perpetual leases. The number of such leases registered in the past ten years has been very great. In 1871-72 Sir George Campbell remarked that they were then being granted at

the rate of about 50,000 per annum, almost entirely in the districts of Jessore, Backergunge, Furreedpore, Noakhally, and Chittagong. The figures for the years 1871-72 to 1879 80 are as follows:—

1871-72	47,181
1872-73	54,926
1873-74	66,398
1874-75	100,325
1875-76	109,399
1876-77	102,747
1877-78	108,678
1878-79	119,015
1879-80	126,137

The falling off in 1876-77 was due only to the storm-wave that laid waste the littoral tracts of the Dacca and Chittagong Divisions. Since that year the registration of such leases has spread to Central and North-Western Bengal, districts which have also benefited by the high prices of grain ruling during recent years. In some instances the landlords are specifically reported to be granting these leases only because they despair of getting further enhancement or of collecting their rents, so long as questions of enhancement are open between them and the ryots.

The following extract from the Divisional Report for 1872-73 may here be quoted as indicating the condition of the cultivators in the Dacca Division at this time:—

Dacca Resolution for 1872-73, paragraph 4.

"The material condition of the people has, it is said, greatly improved as compared with what it was only a few years back. Immense sums of money now come into the country for payment of purchases of country produce, of which a fair share clings to the fingers of those through whom it passes on its way from the exporting merchant to the cultivators; but still there is no doubt that a good proportion of it does reach the ryot. A great many ryots have money put by, though unfortunately, instead of being invested, it is for the most part buried. The heavy fall in the jute market during the year diminished the profits of many cultivators, but produced no general distress. It would, according to the Collector of Mymensing, be difficult now to find a village where the majority of the inhabitants are in the toils of the mahajun. There can be no question, says Mr. Abercrombie, that the agricultural class of the inhabitants of Eastern Bengal are in a condition of increasing comfort and independence."

19. This advance in the value of produce in the Eastern Districts has been the chief factor in bringing the rent question to a climax in those parts. In some cases, as we have seen, the ryots have been able to purchase a settlement favourable to themselves; and if that movement were either general throughout Bengal or capable of universal application under provision of law, there would be no reason perhaps for doing more than fostering and facilitating it. But the ryots are not always either able or willing to purchase perpetual leases at fixed rents; and, on the other hand, many landlords think that they too should share directly in the growing wealth of the agricultural community. Accordingly, by many of the zemindars, who found the action of the Civil Courts unsatisfactory, pressure was about this time brought to bear upon the ryots, and the exaction of illegal cesses supplementary to the rent became more and more common; the demand taking this form because a ryot will often consent to pay a cess which he hopes may be taken once for all, while he will stoutly refuse to submit to any alteration of his recorded rental.

20. The general state of feeling on matters of rent in the eastern districts at this time is shown in the following extracts from the Divisional Reports of Dacca and Chittagong for 1872-73. In Dacca the tendency was to violence and illegality; in Chittagong to litigation:—

Dacca Division Annual Report for 1872-73, paragraph 46—(Mr. A. Abercrombie.

"The state of feeling between ryots and zemindars is gradually attracting attention in several places from the frequency of violent collisions. Last year there was the difficulty at Tooshkhally, which had been commenced the previous year. Then there have been disputes on the Megna in Dacca, lately Mr. Wise's property, and now I hear of increased numbers of suits in the Civil Court. Suits in Court, of course, we seek not to prevent, but the violent collisions between combinations of ryots and their landlords' *lattials*, and the fire raisings by which the ryots on strike seek to hinder any from siding with the landlord, are subjects which will have to be considered seriously before long. The plan of operations is simple. When a village has gone on strike, the landlord singles out a few of the leading men and bribes them to his side, with a false measurement, with a null (measuring rod) of length greater than that used in the village, or he throws in a few beeghas of land into his pottah under the denomination of 'kyfeut' or 'hajut' or 'oozeree,' or some other fancy name. These men then go to Court ready to swear anything against the men on strike, and in a day or two some of them had their houses burnt down about their ears.

"In Tipperah the rent question is reported to be the most important subject on which public feeling is stirred. The Lieutenant-Governor has been glad to learn from a special report which has been furnished, and also orally from Mr. Hankey, that in no part of the Chittagong Division have there been rent riots, or indeed any exhibition of public feeling such as might cause anxiety. It is clear, however, that the rent-law litigation has much increased of late, and there seems to be undoubtedly some bad feeling between landlord and tenant in the Tipperah district."

Chittagong Resolution for 1872-73, paragraph 9.

21. Illegal cesses had probably always been freely exacted from cultivators in Bengal, but in 1871 attention was prominently called to the matter by the Board of Revenue, who found a state of things prevalent in Orissa (now, like the Eastern Districts, benefiting by high prices and a newly-developed export trade), which was rightly described as intolerable and scandalous. The following was the text of the Board's report :—

No. 255A., dated Fort William, the 12th October 1871.

From—D. J. McNeile, Esq., Offg. Secy. to the Board of Revenue, Lower Provinces,

To—The Offg. Secretary to the Government of Bengal, Revenue Department.

I am directed by the Member in charge to submit herewith a report,* received from the Commissioner of Orissa, regarding the levy of improper and illegal cesses by zemindars from their ryots, and to observe hat the correspondence reveals a state of relations between the zemindars and their tenantry vhich, though generally supposed to exist throughout Bengal in a greater or less degree, has ever before been so clearly and definitely brought to the notice of Government.

*No. 218, dated 11th September 1871.

2. In the districts in the neighbourhood of Calcutta, where the spread of education has overed a larger surface, and consequently most of the ryots have formed some idea of their ghts, and are prepared to resist the illegal demands of their landlords when urged beyond a rtain extent, it may be presumed that the exactions of the latter are not carried to such a egree as would appear to be the case when the ryots, as a body, are so ignorant, listless, and npoverished, as in Orissa.

3. The Member in charge, though strongly opposed to interference between the landlords nd tenants, is yet of opinion that the principle may be carried too far. It is true that the w, as it stands, would theoretically enable the ryot to resist extortionate demands for unauthored cesses, such as those described in the correspondence, but practically the existing remedy r redress is too costly and too insufficient even when obtained, and where the ryot is not a an of substance, is certain to terminate in his ruin in revenge for the opposition that he has own to his powerful landlord; so that even when the ryots are aware of their rights, they ery naturally prefer to bear the almost insupportable burden of oppression, rather than to llow a course of opposition which would probably result in even greater oppression, nay even utter ruin.

4. The landlords are not only clearly bound by the terms of this agreement for the ttlement of their estates to "conduct themselves with good faith and moderation towards eir dependent talookdars and ryots, and to enforce the strictest adherence to the same inciples on the persons whom they may appoint to collect the rents from them," but the levy cesses of the character specified in the correspondence has been repeatedly declared egal.

5. Not only is it the duty of the Government to "protect all classes of the people, nd specially those who from their situation are most helpless"—a duty the performance of hich they have specially reserved to themselves as a condition of the permanent settlement,—but it is also their interest to carry out that duty, because the extent to which the rrespondence discloses that the burden, not only of the taxation which should properly fall certain specified proportions on different classes of the community, but even of the actual ersonal expenses of the proprietors is thrown indiscriminately upon the lowest class, and hat the least able to support it, must of course interfere greatly with the legitimate power of overnment to impose fresh taxes, and such undue illegal pressure on the part of the emindars, on the great and indigent mass of the people, must be attended with great and nminent perils of a political character.

6. Such considerations fully warrant, in such a state of things as that described in the apers under review, the interference of Government, in view to correct the admitted insufficiency of the existing laws, which have been enacted for the protection of the inferior tenantry of the country. The difficulty is to determine to what extent, and in what direction, action should be taken to effect that amendment.

7. The Province of Orissa having been temporarily settled under the provisions of Regulation VII of 1822, the Commissioner wishes to take advantage of the power conferred on the Government by section 3 of that regulation, to bring under khas management the mehal (estate) of any proprietor who may have engaged for such mehal, when it shall appear that the continuance of such proprietor in such mehal would endanger the public tranquillity, or otherwise be seriously detrimental.

8. This remedy, though undoubtedly severe, is not, in the opinion of the Member in charge, too severe for a determined and persistent disobedience to the law, and for continued exactions from and oppression of the ryots whom the proprietor is bound to protect, or at all events to treat with a due regard to existing laws.

9. Before, however, enforcing so severe a measure, the utmost publicity should be given to the intention of Government to move in that direction, and for that purpose the Member in charge would suggest the enactment of a law, setting forth the necessity for affording further protection to ryots, and the determination of the Government to secure such protection and providing that it should be lawful for the Government, on good cause shown, to

authorize the Collector of a district to make enquiries as to the relations between a landlord and his tenants; and that, if great oppression be proved, the Government may exercise the power of taking the state under khas management (with the due reservation of malikana to the proprietor), under the provisions of section 3, Regulation VII of 1822.

10. To enable the proprietors generally to redress the evils complained of, the Act should not take effect until after two years from its enactment.

11. The Member in charge is fully aware of the responsibility he takes upon him in proposing so extremely severe a measure; but he feels convinced that the state of things described by the Commissioner is one to permit the continued existence of which would be a disgrace to the Government, and would involve the abnegation of some of its most important duties.

To this the Lieutenant-Governor (Sir George Campbell) replied:—

No. 4513, dated Calcutta, the 12th December 1871.

From—H. L. DAMPIER, Esq., Secy. to the Govt. of Bengal in the Revenue Dept.,

To—The Secretary to the Board of Revenue, Lower Provinces.

I am directed to acknowledge the receipt of your letter No. 255 A., dated 12th October, with its enclosures, on the subject of illegal exactions practised by zemindars in Orissa; and I am at the same time to thank the Board, the Commissioner, and the local officers for bringing to the Lieutenant-Governor's knowledge the facts therein disclosed.

2. His Honour entirely agrees with the Board as to the necessity for taking action in the matter. Indeed, in one respect, he would go further than Mr. Schalch, since he does not entertain that reluctance to interfere between the classes who are in these provinces called landlords and tenants, which the Board seem to feel. No doubt, if landlords were absolute and complete owners, and ryots were all simple tenants without rights, interference might not be desirable so long as these relations subsisted, except in cases where the public safety and tranquillity urgently required it. But neither by the terms of the original settlement and original laws of these provinces, nor by modern laws, are zemindars unlimited proprietors or ryots without rights or claims to protection. The Code of 1793 recognized in the fullest manner the rights of the ryots to hold at the established rates, and to be freed from abwabs, those vexatious imposts over and above the public revenue or rent; and that Code is full of provisions and declarations making it clear that the intention of the framers was by no means to abstain from interference between zemindars and ryots. On the contrary, the duty of protecting the lower mass of the community—the ryots—was recognized and asserted by the Government of that day in the amplest manner. Some of the most salient declarations of the kind are very pertinently quoted in the Board's letter. The practice, it is true, has scarcely come up to the theory of these early laws; and it is to be feared that zemindars have in many respects set them at defiance: but His Honour thinks that the interference of Government, when cases of oppression and illegal exaction are brought to light, needs no apology, as for abnormal action forced upon it by stress of circumstances in opposition to general principles; rather would it be a ground of reproach to the Government if, under such circumstances, it should fail to interfere effectually.

3. In the case of Orissa the obligation to protect the ryots from illegal exactions seems to the Lieutenant-Governor to be unusually strong. The Orissa Regulations of 1805 are just as decided and clear in their provisions as those of 1793. Moreover, the zemindars of the temporarily-settled districts of Orissa are less properly landlords, and the ryots are less their tenants than elsewhere. The thanee ryots are, in fact, distinctly proprietors, with each of whom Government has made a distinct settlement, while the zemindars are only collectors over them. As respects the people now called zemindars, Mr. Campbell is not sure whether a proprietary right has to this day been formally conceded to all of them. At any rate, His Honour believes that up to the time of the settlement under Regulation IX of 1833 many of them had no such rights, but were sarbarakars or managers on behalf of Government, and that only. It is intolerable that people in the position of the Orissa zemindars should exercise such tyranny as is depicted in this correspondence over people who stand in the relation to Government which their ryots occupy; and I am therefore to request you formally to warn the zemindars of Orissa generally, that if they continue to make any of the exactions described in your communication under reply, Government will certainly exercise the power vested in it by Regulation VII of 1822, section 3, and bring their estates under khas management. I am also to refer to your letter No. 136A., dated 3rd July of the present year, with its enclosure, and the orders of Government thereupon, from which it would appear that remissions of revenue made in consequence of the late famine never reached the ryots, and that ekrarnamahs, certifying total remission of rent, were taken, when a part only had really been remitted. This communication and your letter under reply, as well as information which has reached him from other sources, leads the Lieutenant-Governor to fear that the zemindars of Orissa are a specially unscrupulous and incorrigible set of men, in dealing with whom strong measures are absolutely necessary.

4. As regards the past, I am to say that Government still reserves the power of treating, under the section above quoted, cases which, as peculiarly aggravated and fitting for an example, render such a course desirable; but before passing definite orders, the Lieutenant-Governor desires that you will call upon the particular zemindars named in paragraph 6 of Mr. Beames' letter No. 382, dated 30th August, to state any reasons which they may be in a position to give why their estates should not, under the provisions of Regulation VII of 1822, section 3, be brought under khas management.

5. I am further to add that, as there is reason to fear that the evil represented in the present correspondence is not confined to Orissa, and as representations have been made to the Lieutenant-Governor of the widespread existence of similar practices in many parts of Bengal, the correspondence will be circulated with the view of eliciting a clear expression of opinion from officers in other parts of the country as to the extent to which these practices prevail and the mode in which they can be checked, whether by special legislation or otherwise.

22. The result of the enquiries thus instituted in the other districts of Bengal was to show that "in spite of the law, cesses in large numbers were levied from ryots by almost every zemindar in the country; the fact being that, owing to the absence of sufficient agency in Bengal, those parts of the Regulations which give rights and privileges to the zemindars have not only been maintained but stretched to the utmost, while those parts which restrained them and limited their rights have been utterly set at naught." (Government Resolution of the 30th May 1873.) The system was, however, so extensive and so deeply rooted in the country, that Sir George Campbell shrank from entering upon a general warfare against it. He trusted that, as the people came to be better educated and aware of their rights, they would learn to protect themselves. He contented himself, therefore, when notifying the nature and amount of the road cess under Bengal Act X of 1871, with informing all the ryots by proclamation that that cess was the only legal cess leviable by a landlord. The ryots were also in many districts soon made aware that they were only bound to pay the rents entered by the landlords in the road cess returns. The effect of this has, no doubt, been to make it more difficult to realize cesses in lieu of increased rent, and to throw the landlords back upon the ordinary law of enhancement.

23. In the case of Orissa, an attempt was made by the Lieutenant-Governor to apply a more direct remedy to the evil. In February 1873 the Board again represented that in many estates of that division the state of things existing was "oppressive to the tenantry and disgraceful to the Government. Not only are cesses levied (wrote the Board) to an unwarrantable extent not in lieu of, but in addition to, an increased rental, but the endeavours of Government to alleviate the sufferings of the people during the late famine have been thwarted, their liberal remissions prevented from reaching the tenantry and appropriated to the benefit of the zemindars, the rights conferred on the ryots at the settlement completely destroyed, the rates then fixed utterly ignored, and the rent then assessed largely increased." The Government of India held that the law would not warrant the sequestration of the estates of offenders as proposed by the Board and Lieutenant-Governor, but measures were taken to remedy the evils referred to by executive action, so far as they could be remedied in that manner. Sir George Campbell's opinion of the Orissa zemindars may be seen in the following extract:—

Orissa Resolution for 1872-73, paragraph 8.

"Considering how the zemindars of Orissa have been created by us, as is clearly shown in Mr. Toynbee's recent publication, and how, notwithstanding their great increase in wealth and the enlarged cultivation, the former easy settlement has been extended for another 30 years, the Lieutenant-Governor thinks their grumbling and complaints of a breach of faith because they do not also get constant remission of revenue besides, is most unreasonable and preposterous. It shows that there are some people who are only spoilt by indulgence. The conduct of too large a proportion of these men towards their tenantry makes it clear that, far from doing as they have been done by, they have sought to exact from those beneath them the uttermost farthing of that which had been forgiven to them by their lord. This, and great deal more besides, they have exacted."

24. The Orissa zemindars were, however, but little worse than those of Behar. The following are extracts from the Lieutenant-Governor's resolutions on the general reports of Patna and Bhagulpore for the same year (1872-73):—

Patna Resolution for 1872-73, paragraph 28.

"*Patna.*—The conduct of zemindars in the division, especially the smaller landholders, is unfavourably reported on. They are described as oppressive on their tenants, and indifferent and apathetic on subjects of public interest. All over the world petty landlords are apt to exact more than very large and rich ones; that is the nature of things, and it probably would be the case in Behar, that great landholders might be made amenable to advice if they really managed their estates direct. The Lieutenant-Governor, however, fears that the fact is much as described by the Deputy Collector of Nawada and the Collector of Sarun in the following passages:—

"The very system adopted in this division for land management renders a faithful discharge of the duties imposed under the regulations impracticable. The landed property is let out in farm, generally on *surpeshgi ticca* for a term of years to speculators in land, who, during their short incumbency, do their best to squeeze as much out of the tenants as possible. The zemindars, wherever they have a substantial share in a village, are, as a rule, oppressive, and on the estates of many of the larger zemindars perhaps, the least consideration for the tenantry is shown. The system of farming widely prevails and were it not that the full rent-roll is not levied in villages leased out to indigo-planters, the stimulus to enhanced rent-rolls afforded by indigo cultivation would have occasioned even a greater rise in rents.'

"Where the pettiest proprietors are also cultivators, they are thriving and prosperous, and there is no better condition; but His Honour is no admirer of very small proprietors, who have abandoned all cultivation and live on the rents only. Sir George Campbell is, however, inclined to think that there are in Behar a good many who come within the class of peasant proprietors, as there are also in the North-Western Provinces, though no doubt they are not

general as they are in the Punjab and elsewhere The Lieutenant-Governor notices that in this district the average rent-rate per acre is stated to be Rs. 5-3-3.

"*Bhagulpore.*—A conspicuous fact connected with the land system of the division is stated to be the absence of intermediate permanent rights between those of the zemindars and the cultivating ryot, and the general practice of farming estates in short leases. This is a thoroughly bad system, like that of the old Irish middlemen. There are very few, if any, zemindars, says the Commissioner, who can be brought to the notice of Government for anything done by them during the year to improve the condition of their villages. As a rule, big estates are let out in farm, and the condition of the ryots is not cared for. The zemindars do not understand or care for improvement; in many cases they are spendthrifts, and their estates are heavily encumbered.

Bhagulpore Resolution for 1872-73, paragraph 10.

"The Lieutenant-Governor believes that nowhere have the rents of a peaceable, industrious, and submissive population been more screwed up than in Bhagulpore. It was the same action of the zemindars that was leading to rebellion in the Sonthal Pergunnahs. As regards particular zemindari estates, however, where the tenantry belong chiefly to low castes, it is stated that they will leave an estate on the smallest provocation, and it is a comfort that the industrious poor are thus able to go off to another estate when exaction is carried to excess. A marked contrast to the condition of the zemindars' ryots is afforded by the tenantry in the Government ryotwar tract of the Damin-i-Koh. 'Whatever,' says Mr. Barlow, 'may stir the minds of the Sonthal population generally, the residents in the Damin are quiet and unmoved. There is no oppression, no levying of cesses and abwabs, the rates of rent are low, and the ryots are well off.'"

Paragraph 11.

25. Meantime, in other parts of Bengal, the pending quarrels between landlords and ryots had been rapidly tending to culminate in more open violence. In July 1873 the Government was made aware that a large portion of the Pubna district was in a state of agrarian revolt against the zemindars. Numerous cases of rioting and outrage had taken place, and extra police had to be despatched from all the neighbouring districts to assist in restoring order and apprehending offenders. The following extracts from the report of Mr. P. Nolan, Sub-divisional Officer of Serajgunge, explain fully the causes of the outbreak:—

"This pergunnah (Esafsahi) was formerly owned by the Rajah of Nattore. In the decay of that ancient family, parts of it were purchased by the five principal zemindars who are now established there, locally known as the Tagores of Calcutta, the Bandopadhyas of Dacca, the Sandyals of Shollop, the Pakrasses of Thull, and the Bhadurys of Purjana. From the first the relations of these new-comers with their ryots and with one another appear to have been unfriendly; they directed much of their attention to raising their collections by decreasing the standard of measurement and imposing illegal cesses, which afterwards tended to become a part of the rent. No pottahs were delivered or kabuliats taken on the occasion of each enhancement, nor did the ryot ever give any written or formal consent to the conversion of voluntary abwabs into dues which could be realised according to law. Thus, in time the total amount collected per beegah in Esafsahi came to be much larger than in neighbouring lands of other pergunnahs, perhaps treble the rate of Barabazar, where the land is at least equally profitable, and which not only adjoins, but is interlaced with Esafsahi, and at the same time it was most uncertain what part of the collections was legal and what was not. The decisions of the courts in the very few cases in which the question came before any tribunal were contradictory. At present there are certain imposts which the zemindar acknowledges to be illegal, such as marriage dues, income-tax, school *khurcha*, and so forth, and there is the old rent of the rajahs which every ryot is willing to pay as the landlord's legal due, but between these two points there is a large balance, as to which it is doubtful how much of it would be held by civil court to be rent, and how much illegal exactions. Where the old rent was a rupee there would be an increase of eight annas made fifteen years ago and regularly paid of late, 4 annas demanded seven years ago and paid except in one bad season, and 4 annas demanded in 1870, and only paid one year, and that by some villages against the advice of others. There would also be some illegal cesses acknowledged as such. In this case the zemindar would say that the rent was Rs. 2, the ryot that it was Re. 1, and perhaps a court might decide that it was Re. 1-8.

"These are the two original causes of the dispute,—a high rate of collection as compared with other pergunnahs, and an uncertainty as to how far the amount claimed was due. The third and auxiliary cause is to be found in the violent and lawless character of some of the zemindars, and of the agents of others. Judging only from cases which have come before me judicially, and been regularly proved, it is clear that the zemindars of Esafsahi are a turbulent set of men, without any respect for law, and very little for life, in their dealings with their ryots and with one another. This compels those who have to deal with them to be firm, and if weak to unite. Their oppression and violent conduct make resistance to them possible only when the ryots form leagues and associations, such as that at present in question. The dacoits and thieves employed by Denendro Nath Sandyal at Bonbaria would make short work with any individual ryot refusing to obey an order. It is therefore necessary that those who would assert their rights against such zemindars should act together and with some show of determination and spirit, such as would frighten the landlords out of all hopes of succeeding by force.

"Such was the state of Esafsahi when the zemindars thought fit last year to ask for further concessions from the ryots. The Tagore family demanded an increase, first of eight annas, then of four annas per rupee, upon a rent already high. The Bandopadhyas asked for kabuliats by which the ryots were to render permanent in the form of rent a disputed cess, to

accept the zemindar's measurements, and to agree to pay all taxes which might hereafter be imposed. There was also a clause in most of the kabuliats empowering the zemindars to eject the ryots whenever they might quarrel, thus reducing the latter to the position of tenants-at-will at a rack-rent in their paternal holdings.

"At first the ryots gave way for the most part. Several hundreds registered the proffered kabuliats, and others seemed prepared to do so. But there came a re-action during the months of February and March. The landlord had failed in an attempt to coerce one village which had stood out from the first, certain suits on bonds and kabuliats having been rejected on appeal, although decreed in the Moonsiff's court. A ryot, kidnapped while in attendance on the court, had been liberated by me, and the offender punished. I know not whether these and some other petty successes in the courts turned the scale, or whether the movement was the natural result of the re-action against exorbitant demands after the first surprise was over. Certainly in the spring the ryots commenced to organize themselves for systematic resistance, and I observed and reported the fact at the time. In May the league spread, and by the beginning of June it included the whole of the Bandopadhyas' estates with the most trifling exceptions

"In the month of June the movement spread rapidly over all Esafsahi. There are in the pergunnah a few villages which have always refused to consent to enhancement or to the illegal cesses from time to time imposed. Thus, the men of Thul Chur stood out against the income-tax cess and captured those who came to compel them to pay. Jugtallah in the Sandyals' estate has never yielded to any recent demand, and there are other villages similarly situated. Although these have held out for years, the zemindars have not sued to enhance their rents, thus showing a want of confidence in the validity of their own claims. They preferred to employ against the villages the usual weapons of force and fraud, false accusation of riot and attacks by clubmen. These, it has often been my duty to punish; the ryots of such villages have acquired a certain familiarity with criminal courts, and with the organisation necessary for the conduct of a dispute with unscrupulous zemindars. When the Bandopadhyas' estates, formerly the most quiet and submissive, became the scene of so remarkable a contention, these resisting villages took the opportunity to extend the movement. Their headmen exhorted the neighbours to make common cause with them. I may here refer to a peculiarity in the Indian law which favours and indeed leads to extensive union among ryots in rent disputes. We allow, as a legitimate cause of enhancement, the fact that a higher rate than the one in question is paid by neighbouring ryots of the same class for similar lands. It thus becomes the interest of every ryot to prevent enhancement in any land near his own, although at first sight he might seem to have nothing to do with the matter. If he lets his neighbours be rack-rented without assisting them in the legal, and often in the physical, resistance they may have to offer, he himself will be rack-rented. Every rise in rents is in law a good precedent, and it may be applied far and wide, each new enhancement being itself a sufficient reason for extending the area of the highly taxed range of country. For instance, the Bandopadhyas' estates are interlaced with land belonging to the Tagores and Sandyals, which again are connected with Bunwari Lal's property. We may be sure that if the Bandopadhyas got their kabulyats, the Tagores would ask for similar ones next year: and if the ryots refused, might be able to get them through the courts. Then would come Baboo Bunwari Lal's turn, and so on through the sub-division and district. Thus, our law in a manner invites and compels our ryots to combine into leagues and unions which are elsewhere only known in manual trades, and which are always and in every country dangerous to public peace, however necessary to secure the rights of individuals. Most of the villages as they joined the league sent in a deputation to ask for protection against the zemindars whom they accused of being prepared to levy the rents by force. The number of villages which have thus notified their adherence to the movement up to date is 269, and 10 or 12 more come in daily.' The league is spreading, and seems likely to spread, wherever enhancements have been recent or severe. It does not touch Barabazar pergunnah or the estates of some of the more lenient zemindars. The demands of the ryots are the rates of the Rajah of Nattore's time, about 10 annas a beegha, Mugdon Saheb's cubit for measurement (the registered pergunna standard), and the abolition of illegal cesses. These terms they notify in their petitions. They have stopped payment of rent, and are said to be engaged in making measurements, in order to ascertain what is due by their own calculation. As soon as they have found out this, they say they will deposit what they owe in the civil court according to law.

"It is impossible to foresee what may take place in the immediate future. The ryots commenced in a good spirit, as was shown by their sending in deputations from each village to my court and requesting that the police might be ordered to keep the peace. But when large masses of men are excited against persons who have never shown any moderation in dealing with them, they may be carried into excess of which they would never have thought themselves capable. I fear that the fact that most of the ryots are Mahomedans, and nearly all zemindars and their superior servants Hindus, may introduce a religious element, or an element of race antipathy into the conflict."

The procedure for enhancing rents adopted by the zemindars of Esafsahi is typical of that followed by landholders all over Bengal. In reporting the matter to the Government of India, the Lieutenant-Governor, Sir George Campbell, remarked :—

"The papers sent up by the Commissioner show in a curious way the state of things existing in Bengal, and the Lieutenant-Governor would draw particular attention to them. Having, he hopes, disposed of the matter so far as actual violence is concerned, His Honour will try as much as possible to have the burning questions which have arisen in these districts settled, to get rid of the state of things thus brought to light. Some of the evils are very deep-seated, and their remedy would involve important alterations in the revenue law of Bengal. It is clear that the zemindars did much to give occasion to the resistance of the ryots, while

the resistance of the latter gave opportunity for some serious (but much exaggerated) rioting and plundering. Some of the agreements taken or attempted to be taken from the ryots have been forwarded to Government. Besides greatly enhanced rents, they stipulate distinctly that the ryots are to pay all cesses that may be imposed by Government, and that occupancy ryots are to be liable to ejectment if they quarrel with the zemindar,—conditions which the ryots might very properly resist. On the other hand, the ryots can hardly claim, as they are now said to do, to hold at the rates current in the Nattore Rajah's time. The harassment by repetition of demands for cesses and benevolences to which the ryots are subjected in consequence of the number of discordant sharers in these zemindaries is very serious. The extreme evil resulting from the entire want of any record of rights, rents, standards, and customs hitherto prevailing in Bengal, is also very strikingly evident in these papers. All this will, however, be more properly considered in the Revenue Department, to which the papers have been forwarded for that purpose."

26. The effect of 242 arrests and 99 convictions in the sudder sub-division of Pubna was to stop all outward show of violence, but the combination to resist passively the demands of the zemindars continued to spread and extended to the district of Bogra, to the outskirts of Rajshahye, and to fresh estates in Pubna. The whole influence of the Government was brought to bear upon the leading zemindars to bring about a compromise, while the local officers lost no opportunity of urging the ryots to the same end. The Lieutenant-Governor was, however, disposed to follow generally a policy of masterly inactivity, in the hope that the parties might thus be driven to settle their disputes among themselves and save Government from having to "grapple with the whole of an enormous subject." Sir George Campbell wrote to the Government of India:—

"Probably such disputes are becoming more numerous and vexatious in some parts of the country, but beyond Pubna and a part of Bogra the Lieutenant-Governor does not know that they are not yet more serious than disputes which have occurred any time for the last hundred years. In the Dacca Division there has been some difficulty and a good deal of apprehension, but when lately the Collector and Commissioner sent up a case which they considered to be a striking instance of the way in which the zemindar on his side may be prevented from getting his just dues, it turned out to be one in which a judicial decision had been passed in favour of the ryots. At the same time there is no doubt that the general tendency of the increasing knowledge and independence of the ryots, and of the general march of affairs, is to render less and less possible the old undefined and unsatisfactory relations between landlords and ryots, in which little was regulated by well-observed rule or right.

"There is one important change of late years which must have a very material effect, and which we are now carefully watching, *viz.*, the transfer of rent-suits from the Collector's courts to the civil courts,—a measure carried out by the late Lieutenant-Governor in 1870. The Commissioner of Dacca puts it that the zemindars now get more law and less rent, and our officers generally seem to think that they really have some ground of complaint. In truth with the zemindars the change is unpopular in two ways,—the recovery of rent is a much longer and more costly business than before, and the rights of the ryots seem to be more carefully and scrupulously dealt with. In fact, the tendency of the decisions of late years has been much more in favour of the ryot than previously. As the Board of Revenue put it in a late report, "the ryot has no ground for complaint against the courts on the score of rulings and interpretations given by them under the law, the tendency of those rulings having been, as is well known, to establish and consolidate his position." This being so, it would be unjust to hand the ryots back to any courts less scrupulous regarding the provisions of the law in their favour. But both the Government and the High Court feel that the arrangements should be such that simple cases for the recovery of rent clearly due should be promptly disposed of, and the High Court have taken measures to that end. Probably the cost of such suits, and of suits for exaction brought by ryots, should be cheapened by a reduction of the stamp duty to its former rate.

"The above is the information which the Lieutenant-Governor can give the Government of India regarding the present position of the rent disputes in Pubna and elsewhere, and the measures which we may or may not adopt to meet immediate necessities. But when we come to the question of the more permanent measures to be taken to obviate, or effectively to deal with such disputes in future, we enter upon a very wide question, which probably will not be fully settled in this generation. The Lieutenant-Governor has, as he has explained, avoided anything likely to precipitate matters, not as diminishing the importance of the subject, but because of its enormous vastness and importance. He has, before this, expressed his belief that the relation between landlords and ryots in Bengal is a subject on the course of which must mainly depend the political position for a very long time to come. However we may stave it off in particular instances, he has no doubt that the time is approaching when it will be forced on us. If we make an attempt to settle any considerable part of it, we shall probably before long have the whole of it on our hands, and shall scarcely be able to stop till we have in fact made a settlement of Bengal, adjusted and recorded all rights and all incidents of tenure, and created a machinery for perpetuating and continuing the record of rights and keeping accounts by public officers under a system such as the framers of the Permanent Settlement designed, but their successors wholly abandoned,—a very long, difficult, and expensive, but a necessary process it will be The road cess returns may be said to be the commencement of a record of tenures and rents which we shall have to follow out to the end. They have been obtained with unexpected ease and absence of friction, but, no doubt, when we go more into the detail of rights, the task will be greatly more difficult.

"It may be doubted, too, whether we shall be able to avoid some further review and adjustment of the rent law. There is no doubt great difficulty at present in determining what rents are really payable, and still more in determining the claims to enhancement of rent put forward by the zemindars. If the courts fail to deal with these things, resort is had to violence; and though the Lieutenant-Governor has expressed doubt if the disputes are yet more serious than have been known before, there certainly does seem to be among our officers an apprehension that difficulties may increase and things may come to a crisis. This apprehension has been more especially manifested in the eastern districts, in the Dacca Division, and the Tipperah District. The Commissioner of Dacca seems to think that the difficulties are increasing, and that landlords have now as much ground of complaint as tenants. The passage of his last report in which he describes the state of things is here transcribed :—

Extract from the General Administration Report of the Dacca Division for 1872-73, paragraph 46.

"'The state of feeling between ryots and zemindars is gradually attracting attention in several places from the frequency of violent collisions. Last year there was the difficulty at Tooshkhally, which had been commenced the previous year. Then there have been disputes on the Megna in Dacca, lately Mr. Wise's property, and now I hear of increased number of suits in the civil court. Suits in court of course we seek not to prevent, but the violent collisions between combinations of ryots and their landlords' *lattials*, and the fire-raisings by which the ryots on strike seek to hinder any from siding with the landlord, are subjects which will have to be considered seriously before long. The plan of operations is simple. When a village has gone on strike, the landlord singles out a few of the leading men and bribes them to his side with a false measurement, with a null of length greater than that used in the village, or he throws in a few beegahs of land into his pottah under the denomination of "kyfeut" or "hajut" or "oozoree," or some other fancy name. These men then go to court ready to swear anything against the men on strike, and in a day or two some of them find their houses burnt down about their ears.'

"The fire-raisings and breaches of the peace have been criminally dealt with, as have been the riots in Pubna, and some of the most serious differences have been settled, but undoubtedly the liability to a more frequent recurrence of such cases remains, and the state of things is one which calls for a remedy.

"Still reasons have been given why the Lieutenant-Governor has not desired to precipitate too much direct Government action. Another important reason influencing him in the same direction remains to be stated.

"There is no doubt that the late disturbances have frightened the zemindars, and many of them would now gladly invoke Government interference and assistance. But, on the other hand, we also know that till the zemindars are themselves reduced to straits and difficulties, no class is so ready to protest against any interference on the part of Government as a violation of the rights of property, a breach of faith, a tampering with the Permanent Settlement, and what not. The Lieutenant-Governor thinks that the terms of the Regulations which established the Permanent Settlement amply warrant such interference, but the zemindars of Bengal are a class who make themselves heard and secure attention to their reclamations. In point of fact we have not actively interfered so long, as it was only alleged that the zemindars were taking too much from the ryots. It would be hardly decorous, then, if it could be said that we interfere the moment there is a suspicion that the zemindars may be getting too little. The moment they get over the present difficulty, they would return to their old cry of non-interference with the rights of property.

"Probably, then, the proper time for direct interference will be when the evils are so undoubted that we can interfere thoroughly and effectually with the general accord of reasonable men on both sides, and with the determination to carry interference to the point which will secure a permanent settlement of the relations of the various parties interested in the soil, and ensure the continued enjoyment by all of their respective rights. Whether that time has come, the Lieutenant-Governor is not yet prepared to say. Much information is now being collected; the reports coming in from the districts and divisions contain much on the subject. If the Government of India are willing that the subject should be taken up in earnest, the occasion is probably not far off."

27. The foregoing extract exhibits very graphically the greatness of the difficulty, the widespread dissatisfaction with the existing Rent Law, and the conviction on Sir George Campbell's mind that the Government might at any moment be called upon to deal with the whole Rent question by very radical legislation. The Government of India, in commenting on the reports received, made various suggestions for disposing of the matter for the time, the tenor of which will be gathered from the following extracts from Sir George Campbell's reply to the remarks of that Government :—

"The Lieutenant-Governor has not now before him the proposal of the Board of Revenue of 12th October 1871 (alluded to in your 3rd paragraph), for taking direct management for a time of estates in which there has been great oppression. He has already expressed the opinion that such a measure would have a good effect in Orissa, where old-fashioned zemindars would not like to lose their power and means of exaction, and where the opportunity might be taken to restore the ryots to the position originally secured to them by the settlement. But as regards Bengal, this question has two sides. The majority of Bengal zemindars has no love for the cares and troubles of management; many of them have never seen their estates. Their great object is to derive as large an income as possible with the least risk and trouble. Hence it may be that if the only result of gross mismanage-

ment were that Government would take charge of their estates with the tender and excessive regard for the interest of the proprietors, which has hitherto distinguished the Court of Wards' management; if the estates are to be supervised by Government officers without cost to the proprietors, rents raised, Bramin and other lakhíraj tenures resumed, troublesome servants and agents got rid of, and the whole of the increased profits paid over scrupulously to the proprietors; if this is to be the arrangement, then even if on the whole benefit might result in the particular instance, the Lieutenant-Governor very greatly doubts whether the measure would act as an effectual deterrent against mismanagement and oppression. The effect might rather, he thinks, be the opposite if zemindars feel that when the worst comes to the worst, the result would be what is above mentioned, and Government would pull them through their difficulties. Some might not like the process, but very many would not at all object.

"The Lieutenant-Governor's opinion, therefore, is that a measure of this kind will not be really effectual unless the Government of India is prepared to accede to very decided measures :—to deprive the proprietors of their profits, save a reasonable *malikana*, to enquire into and record the rights of the ryots, and to secure their position against future tyranny and injustice.

"With reference to your 4th paragraph, I am to explain what is perhaps not understood by the Government of India, that in Orissa rent-suits are still tried in the revenue courts, and not in the civil courts. The Lieutenant-Governor has long been of opinion that the stamps imposed on rent-suits by recent stamp laws are too high, and the procedure under Act X of 1859 might possibly be somewhat simplified; but Sir George Campbell must most strongly represent that no such simplification of the procedure will suffice to remedy the injustice which has been committed towards the Orissa ryots. If their rights were now well defined and recorded, he does not doubt that, with the attention drawn to the subject, a reduced stamp duty, and any additional assistance that may be required, our officers could do much justice in Orissa, even under the present law, in case the zemindar should attempt to tamper with the ascertained rights of the ryots. But the difficulty is that, thirty-five years having passed since the settlement without any adequate protection to the ryots, with no continuance of the record throughout all the time, no decent accounts, public or private, and no security against the constant attempts of the zemindars to suppress ryot rights, there has come to be a state of things in which the ryot is too much weighted to leave it possible for him, ignorant and oppressed as he is, to assert his rights successfully by individual suits. The more the ryots had substantial rights by that theory of the Orissa settlement, and the more the zemindars were by the same settlement mere middlemen and collectors, the more it has been an object to the zemindars to obliterate the rights and lower the position of the ryots and to raise their own. As shown in the reports, they have lost no opportunity to deprive the *thanee* ryots of their Government pottahs, to change their lands, to raise their rents, to obliterate the distinction between *thanee* ryots and mere tenants, till the situation is such that nothing but a full enquiry by an authority vested with large powers can restore the ryots to a position in which they may be fairly expected to hold their own for the future. The Lieutenant-Governor would beg that a copy of this letter may be put with the file regarding the Orissa oppressions, as containing the expression of his renewed and matured opinion that nothing but a re-settlement, restoration, and record of rights in Orissa will cure the injustice existing there. He would much hope that the Government of India may be induced to reconsider their last letter declining that measure.

"Coming now to the question of the transfer of rent-suits to the civil courts, which has been carried out in the greater part of these provinces, the Lieutenant-Governor must beg leave to say that he cannot find that he has committed himself to the opinion attributed to him in your letter, that these suits should be re-transferred to the revenue courts. He only suggested what he still believes, that considerable hardship has been inflicted by the expensive and lengthy procedure of those courts; but he carefully added that the Civil Judges are in many respects better qualified to deal with such cases, and that the subject must be looked at on several sides.

"This subject is again discussed in paragraph 12 of my recent letter No. 6T. of 25th ultimo. There is no doubt that the law administered by the civil courts has been much more favourable to the ryots than under the former system. On the other hand, among a simple people unaccustomed to fight in the courts, the difficulties and expense of procedure probably more than counterbalance this advantage when the ryot is the complainant. It seems to be so in the Patna Division, it would be so in Orissa; but in parts of the country where, as in Eastern Bengal, the ryots are experienced in litigation and have a strong power of union, they do not complain of the present state of things. They cry for re-transfer to the revenue courts is distinctly a zemindar's cry; and though it has some good ground, in so far that the realisation of an undisputed rent is now unduly difficult and expensive, the Lieutenant-Governor must strongly repeat what he before said, that the ryots should not be handed back to any courts less scrupulous of their legal rights and privileges. Care must be taken to ensure that much in any arrangement for the trial of rent-suits.

"In truth, the rent question is one of extreme difficulty, and is after all only a part of the whole revenue law of Bengal, which in the Lieutenant-Governor's opinion must be consolidated and re-considered. His principal hesitation on this subject has been caused by the fear that in the process the zemindars may manage to get rid of some of the old landmarks of the Permanent Settlement so far as they fixed a limitation to the rights and expressed the duties of landholders. But keeping scrupulously in view that the essentials of the laws of 1793 must be very carefully reproduced, he thinks that the consolidation must be carried out. He is not prepared to recommend the re-transfer of rent-suits till the whole of the relations between landholders and ryots in Bengal are re-considered in the broadest way.

"I am now to address myself to the proposal contained in your 5th paragraph, the appointment of a Special Commission in Pubna. Your present letter of 23rd September

was written without the reply of this Government to your previous letter of 13th idem which put the question in a broader form,—"whether any action is proposed to be taken to adjust equitably these differences, the continuance of which might at any moment become serious;" and my letter No. 6T. of 23rd September, in reply to your former communication will have put the Government of India in possession of several considerations which have occurred to the Lieutenant-Governor, and bear on the present specific proposition.

"The proposal for a Special Commission to adjust equitably the Pubna differences, is one which has lately been put forward and much favoured by the organs of the zemindars. The Lieutenant-Governor must confess to have had some feeling of repugnance (already indicated in the 15th paragraph of my former letter) to concede the special machinery and extraordinary powers sought by the zemindars to get the zemindars of Pubna out of their difficulties, while no such concession is made to rescue the ryots of Orissa from the zemindars. But trusting, as he does, that on re-consideration this last measure will be conceded, and believing that, though the demand for an equitable adjustment in Pubna now comes from the zemindars, it would be equally beneficial to both parties if it be carried out in a manner sufficiently thorough and complete, he would most gladly accept such a solution, provided the terms and conditions of interference are made clear and sufficient.

"It would, however, be most necessary to have regard to the cautions indicated in paragraphs 15 and 16 of my previous letter. The Lieutenant-Governor would ask the Government of India to consider exactly what the situation is in Pubna. He believes, speaking generally, it is certain that in the first instance the law was, and, so far as the original matter in dispute goes, still is, with the ryots. The zemindars have not legally and regularly enhanced the ryots' rents; they had served no notices of enhancement such as the law requires prior to the present year, but they had imposed very heavy cesses in addition to the proper rent, and they attempted in the present year to make both further enhancements and a consolidation of the irregular cesses with the rent by illegal and improper means. The Lieutenant-Governor believes every one is agreed that the first fault was that of the zemindars or of some of them. He observes that the complaint of the organs of the zemindars, speakers at the British Indian Association, and others, is that the ryots took an unfair advantage of the law, but they admit that the zemindars proceeded irregularly. Some of them certainly proceeded in an extortionate manner. The result was the union and violent outbreak of the ryots; and there has no doubt followed on the part of the unionists a disposition to take advantage of the situation to set up a case unfair to the zemindars, and, as has been before said, to meet the demand for too much by offering too little. It is under these circumstances that the zemindars, finding the laws against them as regards enhancement and cesses, and even their proper rents endangered by the spirit which they have evoked, call out for an equitable adjustment,—that is, for a special and extraordinary interference, to give them by a summary process all that they can equitably claim. Their own imprudence and exaction have got them into a scrape; they are frightened, and they would very naturally be glad to get fairly well out of the difficulty for the present.

"The local officers have several times reported an inclination on the part of the zemindars which is a key to the difficulty and to the cautions suggested in the latter part of my former letter. They have shown great willingness to take now the rents which they have hitherto received, 'till they can sue in the civil courts for enhancement,'—a settlement which, as the local officers justly observe, would be no settlement at all. It simply means that, having made a false step, the zemindars are willing to go back till they can proceed more effectually,—till they can get in order their legal machinery, their notices, their evidence, and their lawyer power, and then at their leisure go into court to crush their adversaries in detail, with all the advantage that money and lawyers and a skilful working of the law can give them.

"The Lieutenant-Governor has no hesitation in saying that if a Special Commission were merely to give the zemindars all that they can equitably claim now, and to leave the whole question open for the future, he would entirely demur to such an arrangement as altogether a one-sided settlement.

"On the other hand, if the Government of India are prepared to give the Commission the power necessary to settle the questions in dispute, so as to set them at rest both now and for a long time to come, the Lieutenant-Governor would entirely concur in such a settlement. There should be no doubt on this point. If the settlement is to be effective, it must not only get the zemindars out of their present difficulties: it must bind them for the future. It must settle all questions of possession, measurement, and rates; it must decide who is, and who is not, liable to enhancement; and it must have power to prescribe a term—a good long term—for which its adjustment is to be binding, and the zemindars are not to be allowed to disturb the rates and arrangements made. No doubt this will be a serious undertaking, but it would be an effectual and beneficial settlement if fairly and thoroughly carried out. The Lieutenant-Governor would not advocate interference unless it is carried to this point. If the Government of India are prepared to go thus far, he may at once say, in modification of his previous expressions, that he does advocate it. His only fear is lest the measure should be carried so far as to tide over the present difficulties of the zemindars, and should then be cut short. The Lieutenant-Governor much trusts that if the Government of India take the line which they have indicated, the measure will be made clear, thorough, and complete, so as to leave no opening for its frustration.

"His Excellency in Council will, no doubt, consider whether the expense of settlements of this kind is to be charged to the zemindars, or whether the Government is prepared to bear it."

28. It will be seen that Sir George Campbell held that the differences between zemindars and ryots throughout Bengal were such as to require a very thorough revision of the substantive law, and his main reason for leaving matters alone was avowedly because he thought and hoped that, if he did so, the ryots would, on the whole, have the best of it.

29. The Government of India deferred to a more convenient season the "consideration of a legislative measure to enable the Government to apply a speedy remedy to illegal exactions on the part of zemindars." (Home Department No. 50, dated 14th January 1874.) But the Secretary of State directed that "the question at issue between the zemindars and the ryots" throughout Bengal "should be carefully watched, so that when the proper season comes, an effectual remedy might, if necessary, be applied." (Despatch No. 12 of 16th April 1874.)

This conclusion was perhaps in view of the facts already before the Government rather a weak one, but it need not be inferred that the Government of India and the Secretary of State deliberately endorsed Sir George Campbell's view that the best plan for arriving at a settlement of the rent question was to wait until the disputants were reduced to a state of helpless exhaustion by long and indeterminate conflict.

30. The local officers continued, with more or less success, both in Pubna and Bogra, their efforts to bring about compromises between zemindars and ryots. In all such negociations it may fairly be said, without implying any censure of the local officers, that all the gain was on the side of the zemindars, the ryots being always made to submit to some enhancement, although perhaps the zemindars got less than they wanted. In Bogra, indeed, the Lieutenant-Governor had to point out to the Collector that he was far too ready to assume that the ryots were universally and undoubtedly wrong in their contentions regarding the rates of rent (Revenue letter No. 3077, dated 25th November 1873).

31. Further east, in the district of Dacca, the same spirit of combination among the ryots to resist the demands of the zemindars manifested itself in 1873, and formed the subject of a special report by Mr. J. G. Charles (then Joint-Magistrate of Dacca and now Judge of Rajshahye), which attracted the attention of the Government of India. The following paragraphs may here be reproduced :—

"6. It may not be out of place here to consider briefly the chief causes which in spite of our laws and law courts have hitherto kept the rights of the cultivator in abeyance, while the power of landlords has been exercised almost universally far beyond the limits authorized by the Legislature. The widespread ignorance of the Bengal cultivators with regard to their legal rights, as opposed to the time-honoured customs of their neighbourhood, or the wishes of the local landholders, may certainly be assigned as one of the chief reasons why they have not hitherto made a more general stand against the arbitrary exactions which have been forced upon them."

"8. The proverbial delay and expense attending the final settlement of disputes referred to the civil courts is another reason why the ryots throughout the country have hitherto not been more ready to take the initiative in withstanding their landlords. The wealth of a powerful zemindar who takes advantage of the dissensions which are rife in almost every Hindu village enables him to contend successfully with refractory individuals, and thus to inspire the others with a wholesome dread of his power, and it is only when the cultivators realise the community of their interests and the essential necessity for combined action, that they can ever hope to hold their own. Besides this, in Bengal, where a regard for truth is so conspicuously wanting among the lower orders, wealth and power will generally secure a preponderance of evidence in our law courts, and the landholders throughout the country have not been slow to turn to account the venality of witnesses in furtherance of their own purposes."

"12. There are signs, however, in Eastern Bengal at least, that the ryots have begun to realize the favourable position in which they have been placed, and that they are fast learning the irresistible power that they acquire by combination.

"13. As far as I have been able to ascertain, the organisation of agricultural unions on a large scale has only been attempted for the last two or three years, and has, generally speaking, hitherto been confined to the estates of the less powerful zemindars, for the owners of vast properties like Kali Narain Rai Bahadur, of Bhawal, are still too absolute to render it easy for the people freely to have recourse to the law courts, and any attempt at combined action would promptly be nipped in the bud. There seems to be no doubt, however, that the success of these combinations has had a marked effect upon the neighbouring ryots who are eagerly watching the result of the strikes which have taken place, and there is every reason to suppose that the movement will spread."

"15. These combinations are by no means always the result of unusual oppression on the part of the local zemindars, and it will frequently be found that where there is really least ground for complaint, strikes are most obstinate and effective.

"16. Although the immediate exciting cause of active hostility is generally an attempt on the part of the landlord to raise his rents, yet such demands, if not excessive, are not altogether unreasonable when we take into account the enormous rise of late years in the price of agricultural produce of all sorts; while, owing to the *onus* of proof in cases of this nature

resting upon the landlords, the result of recent litigation (in this sub-division at least) has been so unfavourable to them that they have sometimes been obliged to content themselves with decrees at lower rates than they have actually received for the last two or three years.

"17. I have estimated the disaffected area at about one-eighth of the Moonshigunge thana, and the number of ryots within the influence of these demonstrations is probably not less here than from 10,000 to 15,000 men.

"18. With the exception of Juar Abdullapur (where the majority of the ryots are Hindus), the villages entered in Appendix E are inhabited chiefly by a Mahomedan population, and moreover the people are nearly all Ferazies. This fact is most noteworthy, as it can hardly be doubted that the religion of the peasantry has no small influence upon their power to act in concert. I do not mean to assert that this movement has any connection whatever with religion, but combination is much more easy among a sect whose faith enjoins absolute social equality than among Hindus who are divided into endless varieties of caste, jealous and distrustful of each other. Even among Mahomedans, the sect of Ferazies is distinguished by an almost fanatical unity, and the bonds which are so fully acknowledged in spiritual matters possess a vital power in enlisting the combined sympathies of the people in a struggle to obtain concessions in which they are all equally interested."

"20. The chief permanent causes which may be assigned for the growing independence of ryots, are I think, as follows:—

1. Increasing knowledge of their legal rights.
2. Marked increase of wealth during the past few years supplying them with the means of fighting for their rights in the civil courts.
3. Decrease in the power and influence of landlords owing to a more strict application of the criminal laws.

"21. The decreasing power of the zemindars renders the collection of 'abwabs' or cesses much more precarious and difficult than formerly, and hence the attempt is now being made in many places to raise the rent recoverable by law in order to adopt the system of collections to an altered condition of things.

"Rents once raised are never reduced and are rigidly exacted as the right of the landlord; but cesses (in Eastern Bengal at least) are more dependent upon the good-will of the ryots and are not looked for in years of scarcity, and this flexibility of his burdens is by no means distasteful to the cultivator.

"22. In the course of the inquiries I have made in connection with the subject of this report, I have been much struck with the large proportion of the gross produce which falls to the share of the cultivator of the soil in many parts of this district; and, although the condition of the Bengal ryot is generally supposed to be analogous to the miserable cottier tenants of Ireland, yet the result of my investigations shows that, far from any such analogy existing here, the peasantry of Eastern Bengal hold their lands on much more favourable terms than the Metayers of France and Italy; while in places where the tenantry have combined, from the increasing difficulty of enhancing rents, the status of ryots with rights of occupancy, is little removed from that of hereditary tenants holding their lands at easy and practically fixed rates."

"25. After a careful review of all the evidence I have collected on the subject, I am satisfied that if an average were struck for the Moonshigunge thana the proportion of the value of the gross produce paid to landlords, including all extras, would not exceed from 10 to 15 per cent. for occupancy tenants, while in the more fertile villages the landlord's share is not so large. In the Sreenugger thana and the district of Dacca generally, I do not believe the proportion paid to the landlord, including all extras, would on the average exceed ¼th, or 25 per cent., of the gross produce. The proportion of rent paid for mere rice-growing lands in this district is no doubt higher than 25 per cent., but it must be remembered that the labour and outlay required for the cultivation of rice is proportionately small, and the cultivator has therefore plenty of time to devote to other employment; and indeed few ryots in this neighbourhood require to work for more than two-thirds of the year, though their working days depend on the crops which are sown."

"28. In connection with the profits of cultivation the enormous rise in the price of produce which has taken place during the last 20 years must not be lost sight of. The rise during that period in the price of the staple grains in this part of the country (owing probably to a general depreciation in the value of money added to the increase of population and greater facilities of transport) is certainly not less than about 100 per cent., while the encouragement now given to the cultivation of such very profitable products as jute* and safflower have added enormously to the cultivators' gains in this district. It would appear that a marked rise in the price of agricultural produce began in the mutiny year, but the chief impetus to prices was given by the famine of 1865-66, when the rice crops of Eastern Bengal were perhaps not very far below the average, and at the same time famine prices were realized in disposing of them."

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* In 1871 the average price paid to the cultivators for jute was about Rs. 3 per maund, and 20 maunds per Bikrampore kani was the average yield in this subdivision; so that Rs. 60 per kani was the value of the gross produce, while the expenses of cultivation, including rent, did not exceed Rs. 20 per kani, leaving the enormous average net profit of Rs 40 per kani, while the average rent of suitable land is not more than Rs. 6-11. It is only fair, however, to mention that the cultivators last year suffered heavily from this crop, as every available acre was devoted to jute cultivation, while the price paid to the cultivator fell to Re 1-14, and even 12 annas a maund.

"31. The rapid growth of a spontaneous popular movement fostered by the Government of the country hardly admits of doubt, and it seems to be equally unquestionable that the upheaval of society which would be the necessary result of a general combination of the peasantry, must seriously and permanently affect the status of landowners, and will sometimes cause great hardships to individuals, until the relations of landlord and tenant be adjusted on a more stable basis."

32. The following extracts from the Dacca Divisional Report for the year 1873-74, will also serve to illustrate and support these statements, while showing that if the ryots are at times oppressed, a settlement of the rent questionwas held to bet hen equally called for in the interests of the zemindars:—

"About the material condition of the people of this division (and by the people I mean the vast majority of the population, those who are engaged in agriculture, and their families and dependents) there can be no question but that each succeeding year finds them in a steadily progressive state of prosperity.

Dacca Division Annual Report for 1873-74, paragraph 13.—Mr. F R. Cockerell).

"Rents in the Eastern Districts generally are comparatively low, and consequently the greater share of the profits of the land go here to the cultivators, and would, but for their improvident habits, rapidly enrich them.

Paragraph 15.

"Class feeling has not shown itself prominently or in any overt way during the year of report; but district officers report that there are not wanting indications of very unsatisfactory relations between some landlords and their tenants on the question of rent. The landlords see the ryots profiting largely by the enhanced value of the produce of what they regard as their property, and they desire, not unnaturally, to intercept some portion of this increased return some way or other; the action taken by the authorities against the levy of illegal cesses leads them further to desire to place this demand on the safe footing of higher rents.

Paragraph 26.

"Formerly this course would have been effected by gradually getting the ryots over to agree, on the ground of their increased profits, to submit to an enhanced demand of rent; but now such attempts are steadily and passively resisted by the tenantry in combination. The landlord's agents send for them; they ignore the summons altogether; they go further, and withhold all rents, and virtually decline any communications whatever with their landlords, except through the medium of the courts.

"To have to sue the entire body of his tenantry in any large estate is ruinous work to the landlord; his position, therefore, forces him to do all that conciliatory measures can achieve, and so grave complications are for the time being tided over; but I apprehend that an open rupture must come sooner or later. The state of things to which I have referred is unfortunately not confined to any particular tract of country. It exists more or less in each of the four principal districts of this division.

Paragraph 27.

"The year has been characterised by a lamentable number of acts of lawlessness on the part of zemindars of the district of Mymensingh, and several riots of an aggravated character have occurred. The relations between landlords and tenants are by no means all that could be desired, and, though it may be expected that a peaceful solution of the difficulties will eventually be attained, it cannot be disguised that at present we are in a transition state, in which the ryots are beginning to feel their strength, and to be ready to repel force by force, while the zemindars have not yet abandoned the old practice of employing coercion. A striking case occurred only a few weeks ago, in which a zemindar sent three *lattials* to seize two ryots for non-payment of rent. The ryots had been forewarned, and had provided themselves with arms; they turned upon their assailants, and killed all three of them. The Mirzapore riot, which occurred on the 13th November in the Attea sub-division, was another noteworthy case. The landholders (who are zemindars of Pubna, but hold extensive talooks in pergunnah Pukhuria of this district) sent a body of above 100 *lattials* to coerce the ryots into paying enhanced rents. The accident of a *lattial's* pony straying into a ryot's rice-field led to a collision, and there was something like a pitched battle, weapons being freely used on both sides. A ryot was shot dead, and six men on the same side were wounded; four men of the *lattial's* party being also wounded."

Dacca Division Annual Report for 1873-74, extract from page 15—(Mymensingh, Mr. H. J. Reynolds, Collector).

In the district of Tipperah similar combinations among the ryots and extensive litigation instituted by the zemindars were reported in 1873, while the Commissioner of Cooch Behar also had to report thus—

"Under the head of public feeling, I may mention the contest that is going on every year, but has this year become stronger than ever, between the jotedars and their tenants for the right of occupancy. The jotedars are in imminent fear of being supplanted, and are ousting their tenants on every possible occasion in order to preserve their own influence. The belief that Government intended to recognize the rights of the sub-tenants, as alone worthy of support, created great alarm in the Dooars among the jotedars.

Cooch Behar Annual Report for 1873-74, page 6.—(Sir W. J. Herschel)

33. Similarly disturbed relations were reported from other Divisions also. In the correspondence regarding the Pubna riots reference is made to the state of things in Orissa. The following is the Cuttack Collector's report for 1873-74 (Mr. Beames, now Commissioner of Burdwan) :—

Orissa Division Annual Report for 1873-74, paragraph 17.

"It is the unanimous opinion of myself and my sub-divisional officers that the mass of the rural population is in a fairly good condition. The wants of this class are few and simple, and with a good rice crop they get all they want. If properly protected from the oppressions of the zemindars they would be as prosperous a class as any in India, and far more so than the corresponding class in many parts of Europe and Asia.

"It seems, however, to be a fixed idea with the landholding class that the peasant is not to improve his position; any increase of wealth that may arise either from the greater productiveness of the land owing to irrigation, or from the higher price obtainable for produce owing to the activity of the export trade, is to be diverted to the coffers of the zemindar, and the process is rendered easy by the ignorance of the peasant, who does not know that in nine cases out of ten the law protects him from enhancement of rent. There are thousands and tens of thousands of cultivators who, though set down at the settlement as *pahi* or tenants-at-will have held their lands at the same rent ever since, and have now therefore acquired a right of occupancy; yet many of them suffer their rents to be enhanced because they know no better. So that we come back to the point to which every enquiry, however conducted, always leads us, namely, that the thing of all things which we have now to do is to inform the peasant of his rights and to convince him that he runs no risk in asserting them. At present, as Mr. Gun well observes, 'the peasantry all live in a hand-to-mouth way, and are never able to lay by for a rainy day, while many are in a state of chronic indebtedness.' In Jajpore they are worse off than elsewhere, and, as a rule, it may be observed that the smaller the estate, the worse is the condition of the tenantry. A large zemindar can afford to be just, and even now and then lenient: a small one must scrape and squeeze to make both ends meet. In Jajpore there is a crowd of extremely petty estates, and in the pergunnahs of Ahiyas, Katia, Doligrm, and Jajpore, the multiplication of shares in the proprietorship of estates has reached a point almost beyond endurance. There are estates of less than a hundred acres in which there are twenty or twenty-five proprietors, all non-resident, all needy, all fighting with each other, and all unanimous in squeezing their tenants. Nothing but the intense conservativeness of the Oriya ryot, which leads him to cling to the soil even when it will barely support him, enables such estates to be cultivated at all. The constant litigation which these petty proprietors keep up among themselves has a very bad effect on the peasant, as litigation requires money, and that means illegal cesses and exactions on the estate. Litigation also keeps up a perpetual uncertainty as to who is to receive the rent, and the peasant, after paying his rent to A, is liable to be sued for the same rent by B; and, still more frequently, both A and B descend with a gang of followers on the crop and both try to seize it; or A lets a field to one man and B lets the same field to another, and both tenants go to plough it at the same time, whence arises an affray.

"All these things require deep-seated and wide-reaching enquiry and rectification. Till we get this, neither roads, nor schools, nor dispensaries, nor the increase of trade, nor the vigilance of the officers of Government will be of any avail to improve the condition of the agricultural population."

Of the zemindars of the Orissa Division generally, the Commissioner wrote—

Paragraph 116.

"The conduct of zemindars in the district of Cuttack is, as a rule, bad. There are, of course, degrees of badness, and, as a rule, the smaller zemindars are worse than the larger ones; but even among those whose conduct towards their tenantry is least open to objection, I cannot single out any for commendation.

"The conduct of zemindars in the district of Pooree has never been exemplary.

"It is a scarcely credible fact that scarcely a zemindar in the district of Balasore keeps an office or office papers. When a receipt for rent is given, it is on palm leaf, and bears no signature, no specification of date or period for which the sum may be due. The notorious Sibnarayan Paharaj has continued his attempts at oppressing his ryots, and some cases arising between him and his ryots were enquired into personally by me on the spot. In several cases his servants were imprisoned for cutting the ryots' crops by force; in one case a ryot on the zemindar's side had his arm broken, and the persons who attacked him were punished. It is, however, fast becoming clear to this zemindar that he can no longer use force successfully, and he has brought a large number of Act X suits against his ryots, most of which failed, being conducted in the same careless and ignorant manner in which the rest of his affairs are managed. There are, however, exceptions to the prevailing mismanagement."

34. In the cold weather of 1873-74 the approach of scarcity in Behar, affecting also Central Bengal and large tracts of the Rajshahye Division, diverted attention from rent matters in these and other parts of the country; while the high prices realized by the ryots of the Eastern Districts for their grain crops helped to reconcile them to making some small concessions to their zemindars.

35. The general state of matters during 1874-75 may, however, be gathered from the following extracts from the annual reports for that year, and the orders of the Lieutenant-Governor (Sir R. Temple) thereupon :—

"One of the topics that have chiefly engrossed attention during the past year has been the state of feeling between zemindars and ryots, which was alluded to in paragraph 26 of last year's report. I am glad to be able to report that no actual collision took place between the two parties. Things at one time looked very threatening, and, I believe, had we not interfered when we did, serious agrarian riots would probably have ensued.

Dacca Division Annual Report for 1874-75, paragraph 26.—Mr. F. B. Peacock.)

"Another and a less agreeable topic of public interest during the year has been the state of feeling between landlords and tenants, which has caused some uneasiness in the Dacca and Mymensingh districts. On one estate in Dacca serious agrarian riots were apprehended: but eventually the Commissioner and the Collector succeeded in persuading both parties to refer the dispute to arbitration. The arbitrators, however, have been long in coming to a decision; and whether they will succeed, not only in promulgating such decision, but also in carrying it on to the stage of amicable adjustment, remains to be seen. In Mymensingh, though no disturbances have occurred, there have in several cases been combinations among the ryots to withhold rent. It is satisfactory to learn that there is but little of this ill-feeling in Furreedpore, and that in Backergunge the relations between the parties are apparently friendly. The Lieutenant-Governor, however, deems it his duty to state that his own information and impressions do not enable him to support the favourable conclusion as regards Backergunge. Many well-informed native gentlemen have expressed much apprehension as to the prospect of affairs in that deltaic region; and the experience which the Government itself is having in one of its own estates there, tends to confirm that apprehension.

Dacca Resolution for 1874-75, paragraph 11.

"The Lieutenant-Governor entirely approved of the action of the Commissioner in dealing with these unfortunate disputes. It is the duty of the executive officers of Government to maintain the public peace, to act with entire impartiality towards both of the parties, and to induce both of them, if possible, to arrange the difficulty by mutual concession, or a reference to arbitration. The Commissioner has followed this course under the Lieutenant-Governor's directions, and has hitherto succeeded in preventing any breach of the peace, and in several instances has brought the disputants to agree to arrangements which may lead to a lasting settlement of the differences between them. In the opinion of the Commissioner, the introduction into the Bengal Council of the Bill for the prevention of agrarian disputes is likely to contribute beneficially to the quieting of the country. The Commissioner notices a remarkable rumour, which was disseminated shortly after the Viceroy's visit to Dacca, to the effect that the Queen had sent out orders that no ryot was to pay more than five annas per beegha for his arable land, and eight annas for his homestead. For a time great excitement was caused, and it was eventually necessary to issue a proclamation to undeceive the people. The incident shows the direction in which the mind of the people is being drawn, and should be duly remembered by all concerned.

Paragraph 12.

"The relations between landlord and tenant, which, at the time of the submission of the last report on the administration of the Rajshahye Division, were critical and indicated much risk of prospective open conflict, are now in a comparatively satisfactory state. The ill-feeling has greatly abated, if it has not died out, in Rajshahye and Bogra, but no final adjustment of the more widely-extended disputes in Pubna has yet been attained. The main scene of the contest between the ryots and their landlords is the Eshafshahye pergunnah in that district. This contest originated in the estate of the late Dwarka Nath Tagore; but the cause of the landlords suffered most through the unscrupulous, and ultimately unsuccessful, action of the Banerjees of Mooraparah in Dacca, who hold land in this pergunnah, and endeavoured to coerce their tenants to pay enhanced rents by various means, which received the unqualified condemnation of the courts in which their suits were tried. In these cases victory remained absolutely with the tenants, and the display of landlords' tactics in connection therewith had undoubtedly the effect of greatly intensifying the disposition of the ryots to act in combination against their landlords for pure self-defence.

Rajshahye Division Annual Report for 1874-75, paragraph 73.—(Mr. F. R. Cockerell.)

"The Collector reports that there are two other large estates generally affected by the movement—that of the Pakrassies of Thal and the Sandials of Shollap. In the case of the former there is a disinclination on the part of the landlords to try the issue of suits, and there is as yet a difficulty in the way of a compromise, owing to the apparent unwillingness of the zemindars to submit their case to arbitration in an open and straightforward manner, exhibiting accounts divested of all improper sources of income. As the Collector justly remarks, "It is difficult to arbitrate where the main issue is whether certain accounts are genuine or not; such a question is best decided in court.

Paragraph 74.

"In another estate, that of the Sandials, the ryots are described as having the upper hand; for the proprietors are at feud amongst themselves, and can neither take joint action to try the questions at issue in the civil court, nor to bring about a compromise.

Paragraph 75.

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"Considering the reports of the local officers, the Lieutenant-Governor cannot but fear that a great part of the population of the Bhagulpore Division is really badly off. Mr. Lockwood is very decided in his expressions on the subject. A system of rack-renting prevails in some parts of the division; the zemindaries are let either wholly or in part to farmers or lessees, who are thus middlemen, standing between the landowners and the actual cultivators of the soil. It is reported that the object of the rent-receivers is to exact from the ryots as much profit as they can. Sir Richard Temple, however, must observe that, if any real oppression is going on anywhere, and if exactions contrary to law and custom are persistently made in any place, it will not suffice for the local authorities to deplore these evils in annual reports. It will be their duty to warn those who practise such things of the certainty that ere long the cultivators will vindicate their lawful rights and will be protected by the courts of justice. It is not likely that the middlemen will disregard remonstrances coming from such a quarter.

Bhagulpore Resolution for 1874-75, paragraph 4.

"The burning question of the day now is, says the Commissioner, whether a share of the ryots' profits caused by the rise in prices and increased facilities of communication, can be obtained by the landlord, and, if so, what share can be claimed. Mr. Lowis is aware that this is a subject under the prominent notice of Government. The number of rent-suits in the districts of Tipperah and Noakholly was 10,106 in 1872, 11,673 in 1873, and 10,233 in 1874. There is no notable excitement in the other districts, but rent disputes still continue in the district of Tipperah. The Lieutenant-Governor observes that the Magistrate of Tipperah expresses his opinion that the new Rent Bill, which is still under consideration, will be popular with all classes.

Chittagong Resolution for 1874-75, paragraph 12.

"Mr. Bourdillon remarks: 'The Gya ryot is no exception to the general rule. He is under engagements to his zemindar and to his bunneahs, his cattle are pledged to one neighbour and his plates to another, and his life is spent in the wearying task of clearing off one debt only to contract another. Rural serfs, too, under the name of *gholam* and *loundi*, are to be found in every village.'

Patna Division Annual Report for 1874-75, paragraph 61.—(Mr. S. C. Bayley.)

"Mr Eyre's report shows a similar state of things in Shahabad.

"On the north of the Ganges the normal condition of the people is not much better. Mr. Hewitt, speaking for Chumparun, says: 'The material condition of the people cannot be said to be good. Like all Behar ryots, they are extravagant and very much in debt. The rents paid by the lower castes are high, while their profits are small, owing to the low rate of prices prevalent.'

Paragraph 62.

"I may fairly assert therefore that, in comparison with Eastern Bengal, with Chittagong, or even with Nuddea, the people of the Behar districts are very badly off; but I do not argue from this that their condition is deteriorating, or that it is worse than it used to be.

"In respect to Tirhoot, this subject has been discussed at some length by Mr. Worsley and Mr. MacDonnell; and as the subject is one of the highest permanent importance, I venture to quote what they have said:—

Paragraph 63.

"'The material condition of the people in Tirhoot, though ordinarily above want, can scarcely be called prosperous. I must explain, however, that this remark applies to the agricultural classes, and not to the town population, the circumstances of which are comparatively easy. Having always regarded the Hajipore sub-division as the richest part of Tirhoot, I have been much surprised to learn from Mr. Abbott that he is 'led to believe that the condition of the majority of the people is little more than a hand-to-mouth existence.' The experience of the past year has certainly taught us that the effects of extensive failures of two crops must be starvation and death to at least one-tenth of the population of Tirhoot, unless Government comes forward with liberal assistance; but the same experience has also shown that it is not in the Hajipore and Tajpore sub-divisions that such failures are likely to occur.

"'But in parts of Mozufferpore and Sectamurhee sub-divisions, as well as in Eastern Tirhoot, the material condition of the people, however fair it may appear in ordinary years, was found to have little real substance when tested by the famines of 1866 and 1874. This low condition of the people is, in my opinion, the result of a variety of causes. Density of population and its natural consequence, low wages, rapacity of zemindars, weakness of ryots, vicious systems of tenure, and other improvidences, have all combined to lower the condition of the agricultural classes. It is, in my opinion, not the limited area of grain-producing lands, but the inequitable distribution of the produce of the soil, and its demoralising effects, that render the agricultural classes unable to withstand an occasional assault of famine. During the last 130 years and more, famines seem to have occurred periodically, and it does not appear that in earlier times density of population had much to do with such occurences. In those days a bad season, coupled with a system of military and fiscal rapacity, caused the same effects that are now produced by a bad season and constant exactions of zemindars and their establishments. If the condition of the agricultural classes is to be permanently improved, a limit must be imposed on the exactions of zemindars; the old pergunnah rates must be re-established; a guarantee must be given to ryots that they shall themselves reap the fruits of increased industry or improved systems of cultivation; and primary education must be promoted by every possible means.

"'Mr. MacDonnell's views on this subject, which are different from my own, are as follows:—

'On the material condition of the people during the year it is not necessary for me to say much more than I have said. The inhabitants of the sub-divisions may be roughly divided into three classes—the rich proprietors and monied classes, the well-to-do cultivators, the small ryots and daily labourers. The almost total failure of the winter rice of 1873 affected these classes in the inverse order to that in which they are mentioned. The failure of the winter rice of 1873 did not follow unusually bad harvests during the earlier portions of that year: as far as the antecedent harvests went, the people entered unweighted on the famine year of 1874. It is, however, a fact that last year famine supervened much earlier than it is said to have done in 1866, although that year is said to have been preceded by years of scarcity. This fact suggests considerations of much moment. If in 1866 the failure was, as is said, as great as last year, and if 1866 was (unlike last year) preceded by a year of scarcity, what change has occurred in the circumstances of the people which diminishes their power of resisting scarcity? If any such change has occurred within the last nine years, are the causes which brought it about exceptional or permanent? If permanent, by what means can they be remedied? I do not purpose essaying to answer those questions here. They open up the large topics of increasing population; of a soil yielding a smaller return, as time progresses, to an unimproved system of agriculture; of an increased hypothecation of such return; and of a consequent rise in prices, mahajans having a monopoly of the market. That in considerations of this nature is to be found the explanation for increasing poverty of individuals, I have but little doubt. In a district where there is no waste land and but little pasturage to spare, the best remedy for such a state of things is to be found in emigration. If it be our object to bring about within our own times, and with a moderate outlay, such a relation between the soil and the inhabitants that it in ordinary years will yield a surplus sufficient to ensure the people against bad years, then I think that emigration is at present the chief object which should engage attention. Under the circumstances of absence of waste land to be brought under cultivation, all other means for meeting the difficulty of a redundant population seem to me more expedients than remedies.'"

"My own view is that the pressure of population on the soil has very largely increased. The increased security to life and property which our Government has introduced would render this probable *a priori*; it is borne out, moreover, by a comparison of our census with all previous estimates; and it is still further proved to my mind by the rapid disappearance of waste and even of pasture land, which has taken place since the permanent settlement, and indeed since the survey. Whether this pressure has reached the point at which the food-supply becomes deficient, is a question which Mr. MacDonnell's special enquiries now going on are expected to decide. For my own part, looking to the enormous exportation of food-grain from Tirhoot that goes on annually; to the absence of any counterbalancing importation; looking also to the fact that after an utter failure of the rice crop, and a less complete, but still considerable, failure of the bhadoi, there was, as Mr. Worsley says, food enough in the district to carry people on to within two months of the next crop, I am convinced that the produce of the district still leaves an ample margin above the possible consumption in ordinary years; but I am also convinced that they would not export as much as they do, if their economical condition left them better able to supply their primary wants."

Patna Division Annual Report for 1874-75, paragraph 64.

"Rent disputes still continue in the district of Tipperah. They appear generally to arise from the ryots forming combinations and refusing to pay the cesses demanded by the zemindars; whilst the latter, seeing that the rents entered in their books are extremely low, and that the cesses are the main source of income, have either to see their income greatly diminished, to sue for enhanced rents, or to try and collect the cesses by main force. One or other of the latter two courses is generally adopted. In several pergunnahs in Tipperah we have in consequence had to quarter special police. In two thanas especially the disputes have attracted notice, *viz.*, in thana Chagulnya, in the extreme south-east of the district, where there are several pergunnahs belonging to the permanently-settled estate of the Rajah of Hill Tipperah, called Chakla Roshanabad, and in Pergunnah Berdakhat, in Thana Tholla, where the landlords are chiefly independent talookdars. There was an increase in the number of notices for enhancement in the Tipperah district, *viz.*, 2,048 during 1874-75, as compared with 1,840 during 1873-74."

Chittagong Division Annual Report for 1874-75, paragraph 63.—(Mr. E. E. Lowis.)

36. Early in 1875, the great pressure of the famine having passed over, the Lieutenant-Governor (Sir Richard Temple) had his attention drawn to the position of the rent question in various parts of Bengal. It may, in fact, be said that famine and rent legislation were the two principal subjects that engaged Sir Richard Temple's time during the period of his administration of Bengal. On the 16th March 1875, he recorded a minute in which, after referring to the events of 1873, and the subsequent reports of Commissioners, he went on to say:—

"Since these reports were written agrarian trouble actually began to occur during January 1875 in the eastern portion of the Dacca district. A dispute regarding rent broke out between the zemindars and ryots, and threatened to lead to breaches of the peace. If this should not be allayed, it was feared that similar disputes might break out in some of the neighbouring districts. The Commissioner was immediately instructed to warn all parties concerned

of the consequences of a breach of the peace, and to invite them to settle their differences by private arbitration. Efforts are now being made to effect such amicable arrangement; whether they will prove successful remains to be seen.

"It is always difficult to forecast the line which an agrarian people may take, or what provocation might be given on either side. But the opinion seems gaining ground among well-informed persons, that if once any considerable trouble of this nature were to break out anywhere, the movement might spread to other places. In some localities the zemindars might get the upper hand, in other places the ryots. In some localities the strength of both parties might be nearly balanced, and might be equal to sustaining a contest for some time. All circumstances of this nature would either be altogether harmful, or else would do more harm than good.

"In parts of Eastern Bengal there seems to be a disposition among the ryots to combine in something like leagues and unions. The object of such combinations may be various. If any success were obtained by these means, there is always a chance that the ryots might begin to combine in refusing to pay rent, whereon the zemindars might try to collect it by force. The consequences of a combination with this object would be serious in the present state of Bengal. It may be hoped that things will not, under any circumstances, come to this pass. Still we should guard against the possibility of such contingencies arising.

"As yet no trouble has actually broken out since 1873, but, as just seen, something of the kind was very nearly breaking out quite recently, and, despite our efforts, may yet break out. And the apprehension of similar occurrences elsewhere in Bengal is, I believe, present to many thoughtful minds. It may be, therefore, well to consider what measures the local Government can take in the existing state of the law for doing justice to both parties, and for preventing agrarian trouble.

"In such event it could take steps for causing the disputed matters to be speedily determined by appointing additional native judges, moonsifs and others, if necessary, under the supervision of a special European judge. It could station extra police to maintain order, and ensure that the judicial enquiries should be carried out quietly. If the zemindars should attempt to act contrary to the judicial awards, it could easily apply a remedy. If the ryots should refuse compliance with the judicial decisions, and if necessity arose to execute decrees in large numbers, it could doubtless help in that process. But, beyond and above all the things above-mentioned, it could use its influence to prevent either party from resorting to violence, and to induce them to submit to private arbitration.

"These resources taken together are not inconsiderable, and if we cannot get more or better resources, we must make the best of them, and with them we must essay and strive to prevent agrarian troubles in Bengal. But in these resources there are, I think, several defects which might be easily remedied.

"It will be seen presently that among the disputed cases the most important class will relate to economic and agricultural questions with which civil courts are not well fitted to deal. Yet the procedure above described is entirely that of the ordinary civil courts. Suits must be formally brought before anything is done. The cases must be carried through the regular stages; matters pertaining to the profits of cultivation, the value of produce, the customary rents and the like, will be argued out by opposing counsel; appeals may be laid, and decisions can be enforced only by the formal process of execution. However prompt the courts might be, all these proceedings must take time; meanwhile excitement might be growing over the whole district. Moreover, the courts could not well travel beyond the evidence adduced, and might not be able to enter upon economic considerations, notwithstanding that such considerations might have an important bearing upon the cases.

"That the main questions at issue are economic and agricultural will be apparent thus. There will seldom be any serious dispute between the tenants-at-will and the zemindars. The really serious disputes arise between the zemindars and the ryots having right of occupancy—mainly men who have been 12 years and upwards in possession; a class who are constantly growing in numbers, and representing larger and larger proportions of the aggregate of ryots, and who probably are already the most important section of the ryots. In some places the zemindars apparently allege that these occupancy ryots are paying very low rents, and consequently claim some enhancement. The occupancy ryots apparently allege that they ought not to be required to pay more than the old established rates of their part of the country. If the zemindars persist in their demands, they cannot eject the occupancy ryots, but they can sue them under section 18 of Act VIII of 1869, which I will here quote *in extenso*:—

> "'18.—No ryot having a right of occupancy shall be liable to an enhancement of the rent previously paid by him, except on some one of the following grounds, namely—
>
> "'That the rate of rent paid by such ryot is below the prevailing rate payable by the same class of ryots for land of a similar description, and with similar advantages in the places adjacent.
>
> "'That the value of the produce, or the productive powers of the land, have been increased otherwise than by the agency or at the expense of the ryot.
>
> "'That the quantity of the land held by the ryot has been proved by measurement to be greater than the quantity for which rent has been previously paid by him.'

"The civil court then will have to decide whether all or any of the above grounds are or are not found in the particular case or class of cases. Each one of these grounds involves questions for the due settlement of which a civil court cannot be fitted, while the

land revenue officers are peculiarly fitted. The third ground, involving questions of actual measurement, may be more exactly arguable than either of the other two, and the court could order a survey. Otherwise, as regards native measurements, there are frequent disputes as to the unit of local measurement, the length of the measuring rod and the like, which had far better be referred to the land revenue authority than to any other. The first ground, involving questions whether certain other lands in places adjacent are of a similar description, or possess similar advantages with the lands of which the rent is disputed, is not one to be determined by speeches and counter-speeches of counsel, nor one to be settled by witnesses into whose evidence opinion may largely enter, and all this before a native judge who may not know, and probably would not know, much of these matters. The second ground is the most difficult of all, as it involves questions whether the produce, or the productive powers of the land, have been increased otherwise than by the agency or at the expense of the ryot. These are purely economic and agricultural questions which cannot possibly be argued and discussed, and attested in a court of law, with any advantage, or with any definite authority. And yet this is the very ground on which the most serious disputes are likely to arise, and is actually the ground on which the disputes in Eastern Bengal are now arising.

"This latter point may be illustrated by presenting the substance of the dispute now pending in Eastern Bengal. There are very extensive lands of good quality in the valley of the river Megna, of which the rent has been at the rate of 12 annas to 14 annas per beegha. The zemindars say that this rate is very low, and demand an enhancement up to 18 annas and 20 annas. The cultivators, chiefly occupancy ryots, refuse to pay any enhancement upon the established and widely-prevailing rate. If the dispute is to have a legal solution, the zemindars will have to bring a suit against the ryots under section 18 of Act VIII of 1869, above quoted, and according to one or other of the three grounds already adverted to. It is not probable that much difficulty will arise in this instance regarding the first and third grounds, namely, the amount of land in the cultivator's possession, and the general prevalence of the 12 annas to 14 annas rate. The contest must be upon the second of the three grounds, namely, that the value of the produce and productive powers of the land have been increased otherwise than by the agency or at the expense of the ryot. This ground involves general considerations regarding the past and present state of Eastern Bengal; the progress of trade, especially the export trade; the range of prices on the one hand, and on the other hand the expenses of cultivation; the just share of the ryot in the profits of cultivation; the general tendency of rural custom, and the like. It is not easy to imagine matters less suited for discussion in the law courts, when the people are becoming angry on both sides. Manifestly the proper persons to bring these urgent matters to a just and peaceful issue are the Collector and his officers. It should be their business, after a general review of the circumstances, to arrive at a conclusion as to whether the 12 annas to 14 annas rate per beegha ought to be maintained, as the ryots say, or to be raised to 18 to 20 annas, as the zemindars say; and if not, then whether it should be raised to something between 14 annas and 18 annas; or, better still, they should try to induce the parties to submit the matter to private arbitration and abide by its results. And they ought to be able to compel obedience from both parties to any decision that may be formed, which they at present have not the lawful power to do, and which they may not, we fear, be able to do.

"I present this case as an instance which is now in the course of occurrence. The instances which occurred in the Pubna district during 1873 were apparently more difficult, involving questions under all of the three grounds above described. And cases equally difficult may occur at any time in other parts of Bengal.

"I do not enter into any question as to the fitness or otherwise of the civil courts to decide these matters in individual disputes in times of quiet. I only say that the courts cannot be so well fitted as the land revenue officers to decide these matters, affecting large numbers of excitable people on both sides in times of disquiet. In these matters of urgency my desire is to obtain power by law to do, through the land revenue officers—that is, the Commissioners, the Collectors, and the Deputy Collectors, under the supervision of the Board of Revenue—that which in these cases is needful for the peace and good government of the country, without proposing any general change of the existing rent law.

"By the present rent law (VIII of 1869, Bengal Council) the suits regarding rent are heard by the civil courts. They used to be heard by the land revenue authorities, but they were by this Act transferred to the civil courts. Many authorities consider that this transfer was not expedient. The zemindars (as I understand) generally dislike the change that was then made, and would desire to see these suits re-transferred to the revenue authorities. It is difficult to gauge the opinion of the ryots in regard to the transfer of these suits to the civil courts; I have no evidence, however, that they dislike it. I believe that the civil courts have done the work well according to the existing law and have at least endeavoured to do substantial justice. Still my own opinion inclines to be against the transfer that was made in 1869. I apprehend that the speedy and judicious decision of suits between landlord and tenant is very important to the future tranquillity of Bengal, and that the land revenue authorities are much better fitted than the civil courts can be to decide these suits to the advantage of both parties concerned. As, however, the law was passed in 1869, I am not disposed to move for its being essentially altered; although, if the general wish should hereafter prove to be favourable to such alteration, I for one should not be able to object to consider the question.

"But I recommend that the local Government should have the power, upon good cause shown, of appointing the Collector or other officer to settle authoritatively disputes of the nature above described, and to enforce awards. There need not be any power taken to

interfere unduly between landlord and tenant, but only when the parties might apply for our interposition, and when such interposition might appear necessary for peace and good government. There would be no necessity for giving more power to the Collector in fixing rents and rent rates than that which is given by the existing rent law to the courts of justice. There would be nothing of a one-sided character in the matter. The zemindar might make application, so might the ryots. Sometimes one of the two parties might avail itself of this advantage, sometimes the other. The interposition need not extend beyond certain limits, and would be limited to matters of rent and its rates, and the measurement of land as affecting such rents. Within the declared area of interference, and during the period of its duration (all which would be determined by the local Government), the Collector would, after due enquiry and after hearing both parties, fix the rates of rent according to the circumstances, and with such guidance as the existing laws might afford him, and decide suits for rent, both current dues and arrears. The Collector should also have the power of fixing the disputed rents for a short term of years, so that there might be no chance of need arising for again exercising interposition within a reasonable period. The matters thus decided would not be open to revision by the civil courts, but appeals would lie to the Commissioner and to the Board. It might be thought that the parties, zemindars and ryots, or either party as the local Government might direct, might be charged with the expenses incurred by the State by these proceedings: I do not, however, recommend this. The Collectors and the Deputy Collectors, in fact the existing establishment, would be able to do the work, which would not be of constant occurrence. For these objects I have prepared a draft Bill, which I should be glad to introduce into the local Legislature of Bengal. If this Bill, with such modifications or improvements as might be made during its passage through Council, should become law with the assent of the Governor General, then for all ordinary times and occasions the Acts (VIII of 1869 and X of 1859) would remain in force as the rent law of Bengal. The difference between the present and proposed practice would be this, that we should have the legal power, which we have not now, of dealing effectively with agrarian troubles through the agency of the land revenue authorities. It is only by such agency that the occurrence of these troubles is, or can be, prevented in Bengal. At present such prevention is effected at the best in a precarious and uncertain way: perhaps it may not always be effected. But if the proposed Bill were to become law, the land revenue authorities woud have power to prevent such trouble breaking out, and would be under responsibility for such prevention, which responsibility they would, I believe, be able to discharge to the satisfaction of Government.

"The foregoing remarks are meant to apply to Bengal mainly; they are, however, equally applicable to Behar. They apply, however, in a less degree to Orissa, to the Chota Nagpore Province, and to Julpigoree and the Western Dooars, to which territories the Act VIII of 1869 was not extended, and where rent suits are tried by the land revenue officers under Act X of 1859. In these districts the local Government has far better means of preventing agrarian trouble than in Bengal and Behar. Still its hands would be strengthened, even in Orissa and Chota Nagpore, by the passing of the proposed Bill. I would, therefore, extend the measure to all the territories under the Government of Bengal."

37. A measure drafted upon these lines was introduced into the Bengal Legislative Council with the full approval of the Government of India, and the following extracts from the reports and criticisms received with regard to it, show clearly how its provisions were regarded by the official and non-official community.

The Commissioner of Chittagong wrote:—

"I concur with the district officers in considering that, in view of the growing estrangement existing between the zemindar and ryots in Bengal, the enforcement of some such measures as those set forth in the proposed Act have become necessary in order to preserve the public peace; and I am quite certain that thereby the hands of the executive will be much strengthened, for a large proportion of the crime in Bengal is traceable to disputes regarding either rent or land.

"I do not consider that any rules, as suggested by the Hon'ble Baboo Kristo Das Pal, can be laid down as to the rates of rent. As far as my experience goes, the dispute which is now daily gaining ground between landlords and tenants, and which most threatens the public peace, is not what proportion the rent should bear to the produce, but how far the landlord can be allowed to consolidate illegal cesses under the head of enhanced rent. Throughout Bengal the pergunnah *nirik*, or rate, has been kept to in all calculations as to rent, and most ryots are down in the zemindar's books as liable for rent at such rates. Over and above this rent zemindars have been in the habit of getting illegal cesses; in many instances the money has been paid willingly enough, but throughout such payments have been looked on as optional and quite distinct and apart from rent, while the villagers have clung tenaciously to their pergunnah *nirik* in calculating their actual jumma.

"This arrangement has long been acquiesced in by both parties, the zemindars getting what was equivalent to enhanced rent, though the amount was a fluctuating one, the ryot keeping the old pergunnah rate intact and paying such further sums as he and his landlord could agree upon. Now, however, the ryot has learned that he need not pay more than what appears against him on the collection papers as rent, and accordingly declines to give more; while at the same time he resists enhancement as an interference with the *nirik*. The settlement of a dispute of this nature, and, I believe, most of the bitterest quarrels are of this nature, need not involve any very complicated questions of proportion of rent to produce, &c.; a much simpler

procedure would suffice. Action under this Act, to be of any use, must be prompt and summary, and the decision arrived at, the one most likely to be beneficial to the community, not the individual. It will be clearly impossible, for any staff likely to be available, to determine with respect to fifty thousand ryots individually the gross produce of each holding and to assess the proportion to be taken by the landlord and tenants respectively. It would be much more satisfactory in the end to decide whether the pergunnah *nirik* is, looking to the general advantage or otherwise of the estate, too high or too low, and fix accordingly a rate for different descriptions of land.

"Under any circumstances, I do not see how rules are to be framed beforehand to be made to apply to all cases. Acting under the orders of the Commissioner and Board, the Collector must apply such rules as the particular circumstances of the locality demand, only taking care that his procedure ensures a speedy settlement of the matter in dispute. The process may be rough, and individual inequalities in the incidence of the rent may result, but at any rate the dispute will be settled, and the amount of rent payable by each man known.

"I would add some provisions for the collection of rents thus authoritatively settled. It may be, and from the temper exhibited by some villagers in the division it is likely in some cases to be, that the ryots will, even after the rate has been fixed, decline to pay, and we shall be as far off a solution of the real difficulty,—the preservation of the public peace,—as ever. In such cases the Collector may be empowered, on receipt of a representation from the landlord setting forth the names of defaulters and amounts due by each, to treat such arrears as demands under Act VII (B.C.) of 1868, as he is now authorized to do in respect of estates under his own direct management."

The Commissioner of the Presidency Division said:—

"I differ very strongly from the Officiating Commissioner as regards allowing any civil court, from the highest to the lowest, having anything to do with the solution of the difficulties to meet which the Bill was prepared. The reason why the Bill was never prepared is that the existing laws and courts cannot deal adequately with the difficulties the Bill is calculated to meet, and the only chance of success seems to me to be in excluding the civil courts altogether, and in treating the matter as a great administrative question."

The Collector of Nuddea (a very experienced officer) said:—

"I entirely concur in the opinion that legislation is necessary, and that disputes of the nature indicated are more likely to be brought to a satisfactory conclusion by the executive authorities than by the civil courts.

"Though the operation of the Act is primarily to be limited to special cases, I am disposed to believe that, if a standard for determining rents be set up in such an Act by the Legislature, the result would almost certainly be that parties to whom such a standard would be profitable would immediately struggle for it, and that agrarian disputes might be brought about for the purpose of having the rents adjusted by that standard. In my humble opinion the Legislature should commit itself to no such rules as are asked for. The Collector has the best possible opportunity of judging what the immediate circumstances demand. Let him judge; let him explain the grounds of his determination. It will be a sufficient safeguard that his conclusions, as well as the method by which he arrives at them, must satisfy the highest and most experienced revenue officers of the province. After all, the Collector can only make his decision within limits, and those limits cannot be wider than the difference between the wishes of the respective parties. It will not often occur that he need take grounds of his own; he will generally, if not always, be called upon to investigate definite claims. The chances of error, as will lead to injustice, appear to me but small; and the mistakes, if there be any, will be confined to the single case. The Legislature, on the other hand, by passing invariable rules *must* err to some extent, and will run a risk of doing serious and extensive mischief."

The Collector of Jessore (now Commissioner of Orissa) said:—

"As to the general policy of the Act, there can, I think, be no doubt that some legislation of the kind is needed. Since the transfer of rent-suits to the civil tribunals there has been a good deal of dissatisfaction. Suits have been more costly, and they have been more dilatory * * The zemindar has got more law and less rent. The greater difficulty of settling differences at law has no doubt had its share in causing the accumulations of them, which from time to time here and there culminate in the disturbances which have of recent years brought this question to prominent notice. The institution of tribunals capable of settling such differences in an expeditious and conciliatory way is the most effective and politic way of dealing with them."

The Commissioner of Dacca, while of opinion that if the parties would only resort to private arbitration it would be better for both, remarked:—

"There can be no doubt that in many ways its provisions will operate most beneficially, but in some respects it does not, I think, go far enough.

"Our great object should be to keep the parties out of court as much as possible, and to get them to accept and agree to the Collector's award without demur. If, however, this be found impossible, our next object should be to prevent both parties being harassed and worried by attendance at court an unnecessary number of times. In all cases, therefore, of enhancement at rates in accordance with the award under section 8, and after the same has been (if an appeal or reference has been made) duly confirmed by the Commissioner or Board or both, the

Collector should have the power of directing rents at enhanced rates to be paid within 15 days from date of decree, or, in default, that the ryot be summarily dispossessed. In all cases of abatement where the ryot obtains a decree, the Collector should direct payment to be made *and received* within 15 days of any rent that may be found to be due from the ryot up to the last instalment before the date of decree, after giving him credit for the sum by which his rent has been abated, and any zemindar, gomashtah or karpurdaz refusing to accept such sum should be liable, on conviction, to punishment for contempt. In all suits for arrears of rent decreed in accordance with the rate fixed by the Collector, summary ejectment should follow non-payment of the amount decreed within 15 days.

"Here, from figures prepared some short time ago by a very old and experienced Deputy Collector, the zemindar's share is put down at one-twelfth to one-fortieth of the *net* profit, according to the crop grown."

The Commissioner of Rajshahye was personally in favour of limiting the Collector's interference to realization of rents at rates formerly paid, leaving enhancement to the civil courts: but he submitted the following opinions of his district officers.

The Collector of Rungpore said:—

"The Bill is an important one, and is needed, but seems very defective in detail. Moreover, as at present framed, it seems to aim mainly at helping zemindars to enhance their rents easily. If this facility is to be granted them, and the services of special officers are to be employed on their behalf, it seems to me that some protection is needed for the ryots, and some concession should be made to them in the spirit of the old Regulations. If what practically amounts to a new settlement is to be effected, the Collector should have all the powers given by Regulation VII of 1822, and specially of section 9 of that Regulation, to enable him to record local usages and rights, and he should be empowered to recognize the customary rights of that large body of ryots who are not occupancy ryots. According to the Act now in force ryots with rights of occupancy are alone entitled to hold at fair and equitable rents. The great majority of ryots are liable to be rack-rented, and the proposed Act will afford facilities for carrying out the powers by the help of Government officers, if care is not taken to modify its provisions in the direction I have pointed out. If agrarian disturbances are to be prevented by other means than repressive force, there must be concession on both sides, and not all on one side."

The Collector of Pubna said:—

"There can be no doubt that an enactment of the kind proposed is most desirable; had it been in force in the disturbed parts of this district in 1873 it would have done much good. At that time the *rent-rate* was the bone of contention; the zemindars sued on their accounts for a very high rate, and the ryots deposited rent at a very low rate, and the moonsif had before him evidence for either one or the other. It is impossible to deny that the truth lay somewhere between the extremes; for, while the zemindars supported their claims by fabricated papers, the ryots desired to pay rates far lower than were due.

"The Collector, armed with powers conferred by this Bill, could have come to a decision which would have had weight as being accurate, or approximately accurate; but the trial in the civil courts was like gambling for high stakes, and neither party felt satisfied with the result, or regarded it as final. Mr. Nolan tells me that he has recently had occasion to punish ryots for resisting the execution of decrees which had become final, and also to bind over to keep the peace a zemindar who, by show of force, was attempting to levy rent at higher rates than those decreed. He says:—'Neither party acknowledges that justice has been done; and that is not caused by any defect in the judicial officers, but by the nature of the procedure adopted.'

"In this state of affairs it is obvious that a renewal of the struggle must be expected, and I look forward to the passing of the Act as likely to strengthen our hands in preserving peace and restoring order."

The British Indian Association, who now say no case for altering the substantive law has ever arisen, reported thus on the Bill, in a letter dated 12th June 1875:—

"For some years past disputes between the landlord and tenants, the Committee regret to observe, have become chronic in Bengal. The feeling between the two in some of the eastern districts lately appeared to be so bitter, and the outrages and excesses prompted by that feeling so gross and scandalous, that the Government was constrained to employ special police for the preservation of peace and order. The drought and scarcity of 1873-74 for a time calmed the raging passions, but with the return of prosperity in the following year fresh symptoms of the same angry feeling manifested themselves in some parts of Dacca, and the scenes enacted in Pubna would have perhaps been re-enacted there, if the local officers, under the judicious guidance of the head of the Local Government, had not exercised their influence to put down this evil disposition.

"The chief cause of this misunderstanding between the zemindar and ryot is traceable to the uncertainty and indefiniteness of the law governing the relations between the two. Whether as regards the recovery of rent or the enhancement of rent the law is not precise, distinct, or adequate; the result is that the landlord and tenant cannot clearly comprehend their rights and relations to each other; there is consequently going on a constant struggle

between them to assert what they conceive to be their respective rights. They appeal to the courts for the arbitrament of their disputes, but in vain; on the contrary, confusion is worse confounded by many conflicting decisions passed by the courts, leading each party to believe alternately that he is in the right, and this misconception is a fruitful source of the many mischiefs which are so much deplored on all sides.

"Combination among ryots for withholding the payment of rent was not unknown in times past, but the law was strong enough to put down such combination, and the disastrous consequences with which the country is now threatened were therefore not then experienced. Now-a-days, if a number of ryots were disposed to combine and resist payment, they could keep the zemindar at bay for any length of time, and thus ruin him ultimately. The rent suit under the existing law is a regular civil suit, and where it is contested by the ryot is not ordinarily disposed of in less than six months. It is dilatory, expensive, and harassing, and the position of the zemindar may be easily imagined, if the bulk of his tenantry become turbulent and refuse to pay rent. He must institute a suit against every one of his tenantry, and if they continue refractory, he must go on repeating the process, though he must in the meantime, anyhow, meet the Government revenue. Such a process would drain the richest purse, while the judicial agency, however it might be multiplied by Government, could by no means be equal to the strain which would be thus put upon it. The law's delay would be aggravated by the inadequacy of the judicial machinery.

"This state of things can be remedied only by a revision of the general rent law. Greater facilities ought to be given for the realization of rent than now exist, and definite rules ought to be laid down for the enhancement of rent; for if proper measures be provided for these two objects, little room will be left for such combination and agrarian troubles as have now justly filled with anxiety the Government and all persons interested in the welfare of the people of this country.

"The introduction of the present Bill implies, the Committee respectfully submit, a tacit acknowledgment on the part of the Government of the defects and insufficiency of the existing law. But the Bill does not provide the necessary remedies in a constitutional way. If its principle be closely examined, it will, the Committee believe, be admitted on all hands that it is intended entirely to suspend all civil law regarding the most important and valuable class of property in the country, namely, rights in connection with land and that practically for all time, because, as the Bill now stands, it may be brought into operation whenever there is a difference of opinion between the landlord and tenant, and a petition is presented, by any party concerned, to that effect. Such a system cannot be contemplated without the greatest fear, for, where everything is left to the discretion of the executive officers vested with judicial powers, there can be no uniformity of decisions, and no safeguard against the capricious use or even flagrant abuse of such discretion. At the same time, the Committee are free to confess that the state of things which the Bill contemplates means a negation of law, where the ordinary judicial machinery has come to a deadlock, and where there is no other remedy save the arbitrament of disputes on broad discretion. Such a measure can be tolerable only as a temporary expedient, even as the declaration of martial law amidst civil communities to put down disturbances of peace, to allay turbulence and riot, but it cannot be looked upon as a means of solving a permanent difficulty such as the enhancement of rent must always involve The Committee are aware that the true remedy for the evil, the revision of the rent law, is a work of time, and that the evil is pressing, and on that understanding they cannot object to a temporary expedient; but the expedient should in that case bear on its face its temporary and exceptional character; that it should be confined in its operation to a limited period, say to three years; that it will be brought into force to meet only emergent cases; and that it should be followed by a revision of the general rent-law, which would obviate the necessity of resorting to this exceptional measure.

"In conclusion, the Committee solicit that the general rent-law be revised and amended within the three years for which the temporary law should be in operation, so as to prevent the recurrence of such bitter and chronic disputes between the landlord and tenant as have necessitated the present measure."

It will be observed that the first non-official request for a general revision of the rent-law emanated from the Association which now declares no such measure was ever called for.

The People's Association of Dacca wrote thus:—

"Your memorialists have watched, with feelings of great satisfaction, the introduction and progress of the Bill 'to provide for enquiry into disputes regarding the rent payable by ryots in certain estates, and to prevent agrarian disturbances," in the Council of His Honour the Lieutenant-Governor of Bengal, as being a measure which was most urgently needed to set at rest the unpleasant feelings which have broken out between zemindars and ryots in different parts; and beg most respectfully to represent their views and opinions in connection with it as follows.

"Considering the great importance of the interests at stake in the questions to be summarily decided under this Act, and the very complicated and vague nature of those questions, which have led to a great diversity and contrariety of opinions, as regards the most vital points involved in the legislation of Act X of 1859, by the most able and learned Judges of the High Court, your memorialists respectfully venture to think that a special commission, consisting of two officers from the two branches of Her Majesty's service, be appointed under section 5 for the purpose of exercising the functions under the Act.

"The Bill does not provide any rules for the guidance of the Collector in his enquiry, nor does it lay down any rules for the adjustment of the rents due by occupancy ryots. Section 14 of the Bill merely says that the Collector shall follow the procedure prescribed in the said Act X of 1859; but it remains a question whether the Collector is also bound thereby to follow the substantive provisions of Act X, and to be guided by sections 5 and 17 as to the adjustment of rent. Now, if the rent of these occupancy ryots is left to be determined by the Collector under the provisions of the above sections, it cannot be denied that these sections have, from the enactment of the rent-law to the present time, formed the hot-bed of violent contention and argument. These sections have scarcely served the purpose for which they were framed, and the zemindars have scarcely got any relief or advantage under these provisions. The very small percentage of enhancement cases that are decreed, notwithstanding that the value of the produce has been gradually increasing, and the rents of the ryots are disproportionably low, compared with the gross produce of the soil derived by them, will sufficiently bear out the truth of the fact. That the provision in the rent-law for the adjustment of the rents of occupancy ryots is unsatisfactory and quite inoperative has also been recognized in your Honour's minute in the very significant words:—'In some places the zemindars apparently allege that these occupancy ryots are paying very low rates, and consequently claim some enhancement. The occupancy ryots apparently allege that they ought not to be required to pay more than the old-established rates of their part of the country.' Your memorialists fully believe that unless some simple rule be laid down in the place of the vague and complicated provision of the law, the rent disturbances will recur just as they have originated from it. Your memorialists, therefore, most respectfully beg to submit that, in order to avoid all the intricacies and confusion of the present law, a certain proportion of the value of the gross produce of the land measured in beeghas might be assigned as the zemindar's portion payable by the ryots, and the rest be appropriated by the ryots; and all cases of increased value of the produce or the productive powers of the land will be regulated according to this simple and fixed rate of proportion. Now the advantages of cultivation and other circumstances not being equal in all districts, the maximum proportion of the value of the produce payable to the zemindar may be fixed in the Act at one-third, and the minimum proportion at one-eighth, and the Collector will regulate the proportion of the rent within the above limit for every district according to their respective advantages and disadvantages. Your memorialists consider that this rate of proportion will be a most fair and equitable adjustment of the rent, as is contemplated in the case of occupancy ryots under section 5, and it would not be objectionable to either the zemindars or the ryots, and would preclude disputes and quarrels between these two important sections of the community, and render them peaceful and dependent upon each other."

The zemindars of Dacca would no doubt gladly have a law fixing the landlord's (maximum) share of the gross produce at one-third, or the minimum at one-eighth; but, instead of precluding disputes, such an enactment would require an army to enforce it. The ryot of Eastern Bengal pays often only a fortieth part of the produce as rent at present.

The Rajshahye Association wrote as follows:—

"The disturbance, as it occurred in the district of Pubna, passed off so near the Association that it has been able to mark how it proceeded from one stage to another. From the experience the Association has, it can be stated that the Pubna agrarian disturbances owes its origin to the realization of abwabs, or rather to the attempts on the part of the zemindars to turn the abwabs, when the tenants showed symptoms of refusing to pay them, into consolidated enhanced *jummas*. The ryots had understood the abwabs to be temporary imposts, to which they would not be invariably subjected, but found to their great sorrow that they were required to pay these abwabs each succeeding year regularly, and when they showed symptoms of discontent the abwabs were turned into consolidated enhanced *jummas*. Ignorant as the ryot is, he could not be persuaded to understand that the above method of enhancement was far better than that to be had through the intervention of the court of justice. Nor were the zemindars sensible enough to try amicably to persuade the ryots to understand the advantage of agreeing to the consolidated *jummas* rather than be subjected to litigation for enhancement. Thus the zemindars and ryots, failing to understand each other, and the ryot not being aware how a regular enhancement would be more oppressive to him than the method adopted by the zemindars, hated the consolidated *jumma* with all his heart, and looked upon the zemindar who levied it with a hatred equally intense. The ryots then ventured to resist the realization of the consolidated *jummas*, while the zemindar on his part began to levy them with a high hand. Thus commenced the misunderstanding between the ryots and zemindars which gave rise to the well known agrarian disturbance in the district of Pubna. The disturbance itself has now passed off, but the passive resistance of the ryots yet remains. The effect of the latter is manifest in the non-payment of rent by the ryot to the zemindar, who has been obliged to have recourse to law-suits. Thus, there have been several suits for arrears of rent, in which the zemindar puts forward the consolidated enhanced *jumma*. The ryots on their part resist the demand by concealing the actual amount of rent they used to pay before the institution of these suits. Both sides are contending hard and exhausting their resources, and these suits are found to terminate either in favour of the one party or the other, but generally in favour of the ryots. Such decisions cannot be expected to satisfy both the parties. So the litigation is continually going on, which is likely to prove the

ruin of either the one partly or the other, or both, if not put a stop to in time. It can be easily imagined that what has happened in the district of Pubna may happen in other districts under similar combination of circumstances. The Association therefore heartily approves of the parental solicitude of the Government to settle the disputes that may be found to rage in any district of Bengal."

39. The Bill, on which the foregoing criticisms were received, provided for the transfer of all suits connected with rent to the Collector, in all estates while held subject to special procedure of the law, and empowered the Collector to fix rates of rent for ten years before an estate was given up. The Advocate General was, however, doubtful whether the Bengal Council had power to withdraw rent suits absolutely from the civil courts in the way contemplated, and the Lieutenant-Governor proposed as an alternative to meet this difficulty that the decision of the revenue authorities should only be provisional and subject to revision if the parties chose to go to the courts afterwards. In referring this point for the orders of the Government of India, Sir Richard Temple again wrote (on the 21st August 1875):—

"I have to submit, however, that some legislation, with a view to giving the land revenue authorities some jurisdiction in these matters, is very desirable, if not absolutely necessary. The relations between landlord and tenant, in some parts of the country, especially Eastern Bengal, as described in my minute of the 16th March, have not improved, but have actually become, or are likely to become, worse. I have recently had the advantage of visiting some of the places in question, and of conversing upon this subject with the local officers, with most of the principal zemindars, and with some representatives of the ryots. The outcome of the conversations held with many and divers persons may be thus stated respecting Eastern Bengal:—

"*1st*—That there are large disputes pending between zemindars and ryots regarding the degree in which rent may be enhanced by reason of the increase during recent years in the value of the produce of the land.

"*2nd*—That when these disputes become embittered, then, besides the question of enhancement, other questions become involved, such as the levy of certain cesses, the payment of alleged arrears, as the past rates of rent, the area of actual holdings, the end of all this being that the payment of rent altogether in some places is likely to be held in abeyance for some time.

"*3rd*—That under such circumstances zemindars have sometimes attempted, or may attempt,, to collect rents by force, which attempts are forcibly resisted, the result being breaches of the peace.

"*4th*—That as yet there has been no serious nor general trouble since the agrarian riots in the Pubna district in 1872-73.

"*5th*—That this cessation is mainly due, however, to the action of executive authorities in repressing the tendency to disturbance; that nevertheless there is a risk of trouble breaking out, which might spread to the districts of Dacca, Furreedpore, Tipperah, and Backergunge; and that, if executive interposition were now withdrawn, such trouble would soon break out

"*6th*—That the particular disputes in the Dacca district, which the Commissioner and the Collector have been trying to settle by arbitration, are not yet settled, despite the exertions of those concerned in the settlement.

"There appeared to be a consensus of opinion, so far as I could judge, that the Bill now before the Council would be useful. Especially, it is asserted, that had such a law existed in 1872-73, it would have assisted the district authorities in quelling the agrarian troubles in the Pubna district. The experience gained in the district seems to show that these disputes, causing violence at first, then leading to protracted and expensive litigation, impoverishing both parties, and leaving behind them much class animosity of a lasting character, do more harm than good. It also seems to prove that, when such disputes expand and begin to reach hundreds and even thousands of cases, it is quite impossible for the ordinary civil courts to deal effectually and promptly with such affairs. If the matter be left to the regular action of the courts of justice, without any interposition on the part of executive authority, it is to be feared that the story of Pubna will be repeated in the principal districts of Eastern Bengal.

"As stated in the minute of the 16th March last, the executive authorities are preventing the parties from coming to blows; are ascertaining, as well as they can, without formal enquiry, the merits of each dispute as it arises; and are inducing the disputants to resort to arbitration, or to other settlement. How long they will succeed in this remains to be seen. In these endeavours they have no support from any law, save the general criminal and police law. But the police procedure only authorizes the repression of actual violence; and it is difficult for the executive to interpose advantageously without knowledge of the merits of the dispute, otherwise there would be danger of oppression from indiscriminate interference. On the whole, if agrarian trouble is to be prevented (and I believe that the Government of India approves of the view of the Bengal Government that this ought to be prevented), then it is desirable that the land revenue authorities should be empowered by law to do, with a tolerable certainty of success, that which they are now obliged to endeavour to do without definite

authority, and without any certainty of success. If we are right in making these efforts, we ought, I submit, to have the support of legislation in managing affairs which, at the best, are hard to conduct effectively.

"So far as I can learn, the question is less urgent in the districts of Central Bengal; but in those districts which adjoin Eastern Bengal there would be a considerable chance of agrarian excitement spreading if it at once became rife in Eastern Bengal.

"It may be added that examination of the Bill shows its character to be entirely fair and equal for both parties. In some parts of the country, under its provisions, the first move might be made by the zemindars; in other parts by the ryots."

40. In sanctioning the introduction of the Bill, the Secretary of State wrote in his despatch No. 36 of 24th June 1875:—

"It is somewhat unsatisfactory to observe that only six years ago the policy of committing this class of disputes to the jurisdiction of the revenue authorities, which had been, with more or less completeness, invariably followed from the year 1799* to 1869, and which in 1859 was very emphatically asserted and very carefully provided for†, was, upon grounds quite inconsistent with those now taken up by Sir Richard Temple, deliberately repudiated, when by Act VIII of 1869 the jurisdiction so many years exercised by the revenue authorities was transferred to the civil courts. Although it is difficult, in the face of Sir Richard Temple's statements, to believe that this transfer was judicious,—and his arguments certainly point to the conclusion that the older established system, which left these questions to be determined by the revenue authorities, was the best,—it is probably a wise course to return to it gradually and tentatively, and, after cause shown in particular cases, which is the method proposed by Sir Richard Temple's Bill."

* Regulation VII of 1799.
" XIV of 1824.
" VIII of 1831
† Act X of 1859.

To this the Lieutenant-Governor replied:—

"The Lieutenant-Governor believes it will be best for him to refrain from expressing any opinion on the question raised in paragraph 4 of the Secretary of State's despatch as to whether it was expedient in 1869 to transfer the jurisdiction in rent cases from the revenue authorities to the civil courts. In justice to those courts, however, he must say that they are generally esteemed in Bengal to have discharged the duty thus imposed on them very well under the circumstances, and quite as well as could have been expected. Whatever defects there may be in the settling of disputes between landlord and tenant are not attributable to the conduct of the courts.

"But while yielding to none in a high appreciation of the good conduct of the civil courts in the interior of the country, the Lieutenant-Governor deems it his duty to state most explicitly his opinion that disputes between landlord and tenant have arisen, and are threatening to arise, of an extent, a character, and urgency, quite beyond the power and means of the civil courts to deal with effectually; and he believes that this opinion is shared by every district officer in Bengal. We have, indeed, a class of authorities intimately connected with land affairs—the Collectors, Commissioners, and the Board of Revenue—who are the persons naturally qualified to deal with such disputes, without whose intervention, indeed, they cannot, under the existing circumstances of Bengal, be properly settled. Nevertheless Act VIII of 1869 excluded these very authorities from any participation in the determination of disputes between landlord and tenant. While leaving the provisions of that enactment to operate in all ordinary cases, the Lieutenant-Governor is anxious to resume, on behalf of the revenue authorities, the jurisdiction for dealing with such cases as may be deemed by the executive Government to be specially serious; and this is the object of the present Bill."

The Government of India decided that the proper course was to empower the Collector to deal thoroughly with the question of rates and rent suits, and held that the Bengal Council was competent to dispose of the matter; accordingly the Bill with certain modifications in detail became law as Bengal Act VI of 1876 (The Agrarian Disputes Act), which was to remain in force for three years.

41. The condition of some of the districts of Bengal during the year 1875-76 may here be noticed as bearing upon the question of the necessity of rent legislation, and sufficiently is shown in the following extracts from the reports of that year.

In respect of Pubna the Commissioner, after quoting the remarks of the Subdivisional Officer of Serajgunge as showing the "inadequacy of existing arrangements both as regards the law and the courts who administer it, to deal with any serious disputes of this nature," goes on to say:—

"As regards Pubna, the feeling of hostility between zemindars and ryots is kept up by a combination of the latter to withhold all rent without the shadow of an excuse. Speaking generally of the action of the civil courts throughout the country in this matter, I think that these combinations are encouraged by the civil courts almost invariably refusing to allow any damages, instead of giving the full 25 per cent. contemplated by the law, in every such case. Some years ago there was an idea that ryots were induced to withhold rent till decreed *ex parte*, in order that they may pay it into court, owing to the zemindars' servants

not giving proper receipts, or extorting fees in addition; but I think most people will agree that, apart from very rare and exceptional cases, there is no fear of that now that the ryots have on the whole become rather stronger than the zemindars, and that the latter are in fact only too glad to get their justly due rents paid at all. But when even the zemindars' servants take such a course towards the ryots, the law provides an efficient remedy by allowing the ryots to deposit their rent in court, and thus the civil courts have as little excuse for withholding the 25 per cent. damages from the zemindars as the ryots have for withholding the rent itself. If damages were allowed to the full extent, the rents would be paid properly; and it is to be regretted that the courts should encourage a course on the part of the ryots that keeps up a feeling of hostility, and practically leads (though theoretically of course it ought not to do so) to serious breaches of the peace.

Rajshahye Division Annual Report for 1875-76, paragraph 51.

"In Rajshahye no serious disputes have occurred between landlords and tenants during the year, although the feeling which began to show itself in 1873 has not altogether died out. The rents in this district are low, except those for mulberry and sugarcane lands, which are high; and as the price of silk has fallen considerably during the last two years, it is feared that the ryots who cultivate mulberry will hardly be able to pay the high rents hitherto charged, *viz.*, from R4-8 to R6 per beegha.

Dacca Division Annual Report for 1875-76, paragraph 54.—(Mr. F. B. Peacock)

"A large share of public attention, particularly of that portion of the community interested in land, was engrossed by the rent question, of which some solution is becoming year by year more necessary, and which I hope, in some shape or other, is not far distant. There is the same feeling among the zemindars that they are not getting their fair share out of the increased value of the produce of the land, and the same uncertainty as to the best way of setting about getting it which has been gradually growing upon them. There is the same spirit of independence and the same determination to resist enhancement among the ryots. This report is not the place to enter upon a discussion of the merits of the question, which is undoubtedly a most difficult one, the more so as at the present time it is receiving the anxious consideration of district officers, landowners, and ryots all over Bengal, in connection with the Lieutenant-Governor's minute on the improvement of the substantive law for determination of rent, dated 18th April last. I have confined myself therefore to a mere mention of the subject, to show that it is as much or more in the public mind than ever."

There were, however, no actual collisions between the landlords and ryots in this division.

Dacca Division Annual Report for 1875-76, paragraph 57.

"In Mymensingh there have been occasional indications of the existence of unionism amongst the ryots to resist enhancement of rent, but nothing overt has taken place. The combination of the ryots in pergunnah Hoseinshye referred to last year has come to an end, owing to one of the shareholders having arranged his disputes with another shareholder and ceasing to foment the grievances of the ryots. In pergunnah Khaliajori a passive resistance to the zemindars continues to be offered on the spot, and a brisk litigation at head-quarters: but the Collector hopes that the dispute will not do more than smoulder, and at length go out for want of fuel.

Paragraph 58.

"Furreedpore continues to keep wonderfully free from these disputes. The ill-feeling between the Narail Baboos and their tenants in pergunnah Dhuldi still continues, but some of the partizans on each side were made special constables, and peace has been maintained. Till latterly but little had been heard of this dispute, and I was in hopes that it was dying out. It appears, however, to be again cropping up, and the Collector has, under my direction, been recently in communication with the zemindars, who, as far as can be judged from the tenor of their reply, appear anxious enough to remove all cause of reasonable complaint on the ryots' side.

Paragraph 59.

"Neither in Backergunge nor in Tipperah are the relations between landlord and tenant what they should be. In neither, however, does there appear to be any immediate cause for anxiety. In Tipperah rent disputes were most rife in thana Chagulnya, which has been recently transferred to Noakholly. But there are others, chiefly in the northern part of the Brahmunberiah subdivision, which have not yet been terminated. The Collector thinks that, as the parties have now been litigating for three years, the end cannot be far off, as the cases will ere long have been carried to, and decided by, the highest appellate courts. He is of opinion, therefore, that the crisis is past, and that the Act for the prevention of agrarian disputes has, so far as his district is concerned, come too late.

Paragraph 60

"In Mymensingh the levy of the road cess since October last has brought to light the fact that the zemindars very generally levy a sum from their ryots in excess of what the law allows, probably with the view of partially recouping themselves for the loss of the cesses they used formerly to get, but which the ryots now refuse to pay. Even in an estate recently taken charge of by the Court of Wards, in which the owner was generally popular as not being in the habit of oppressing his ryots, the levy had been *at four times the legitimate demand.* In some instances the Collector remarks these allegations of excess demand have been made in the form of complaints, and in one instance a zemindar was tried and convicted of cheating. With that ability to take care of themselves, which is a characteristic of the ryots of Eastern

Bengal, it appears that they are now, and have been for months past, taking copies of such portions of the returns and valuation rolls as relate to their holdings, with the obvious intention of resisting anything beyond the legal demand.

Chittagong Division Annual Report for 1875 76, paragraph 138.

"There were 1,417 notices of enhancement of rent in the division, against 1,216 of the previous year, and 50 notices of relinquishment, against 74 of the year previous, issued through the Collectors of districts. No reliance can, however, be placed on these figures, as only a few of them, if any at all, are taken to the court, the generality of them being dropped at this stage. There have been no disturbances during the year arising out of disputes regarding rent. In Chittagong the zemindars have parted with most of their rights by granting perpetual leases to a very large extent, and the rents of such tenants are always regularly paid. The person obtaining the perpetual lease may have some difficulty with his ryots, but he in his turn grants perpetual leases, and has also often sufficient local influence to enforce his claims without having recourse to the courts. In Noakholly the system of granting permanent leases is also being resorted to in order to avoid difficulties regarding rent.

Bhagulpore Division Annual Report for 1875-76, paragraph 61

"The condition of landholders generally in the district of Monghyr has been very well described by Mr. Lockwood, and I quote below what he says—

"'The zemindars in this district to a man are all in want of money, and pass most of their time in devising schemes to make their land yield more (rent, not produce). The old families, who are somewhat more liberal-minded than parvenus, want money to pay off their debts, or the interest on their debts; and the mahajans, lawyers, and traders, who, by the way, are becoming large landholders in the district, have a natural instinct for clutching at every available pice, the acquisition of rupees passing amongst them as a pastime, as fox-hunting or shooting does among the landed proprietors in England. The method generally followed is to give out farms on short leases to men of well-known screwing powers, and take good security or earnest money beforehand. Landed property is very much sought after now-a-days, and old residents, who remember a time when landed property went almost begging, now see it bought up occasionally at more than its real value. What is the reason of this? Evidently greater security and more speedy justice than formerly.'

Paragraph 62.

"Nothing very extraordinary has occurred in connection with this subject (relation of landlord and tenant), but a few points have come prominently to notice during this year, which show that, even in this part of the country, where matters are usually so quiet, events happen which provoke widespread discontent and require careful watching. There is an estate in the sudder subdivision of Bhagulpore, containing about 200 villages, and almost entirely inhabited by the Sonthals. Not very many years ago it was all jungle. In 1842 the Sonthals first squatted there, and for the first three years they paid no rent whatever. After these three years they got five years' leases from the landholder direct on small jummas. In 1865 the estate was first leased to an indigo concern. The lands were measured, and eight annas and six annas per beegha of dhan and bhita lands respectively were fixed as rates of rent. These rates were raised from time to time whenever the factory got a fresh lease. The first jumma which the factory had to pay was R14,000, the second R25,000, and third, lately fixed. R36,000. The Sonthal ryots paid up the R25,000, and they were not in arrears for a single pice. They now refuse to pay further increase on their jumma, and stand out resolutely against the proposed enhancement. They were ill-advised and began depositing rents in court in their manjhis' names. The Collector showed to them the uselessness of their proceedings, and it was ultimately settled with the manager that he should receive rents at old jummas, leaving the question of enhancement to be settled by the civil court. The ryots are not yet out of their difficulties in this matter.

"Another illustration is afforded by the case of certain estates of Rajah Leelanund Singh in pergunnahs Kheri and Sorohie in the Bhagulpore district. In 1871-72, during the incumbency of my predecessor, the discontent existing amongst the ryots led to inquiry; and at the same time that a Government officer was lent as manager, the pressure put upon the Rajah led to certain reductions being made in the rents of various localities. The pergunnahs named shared in the indulgence, and I believe that the jumma of Kheri was reduced from R71,000 to about R66,000. The period of the last settlement has just fallen in, and new engagements have been effected. I understand that the Rajah has leased pergunnah Kheri to Rai Luchmeput Singh at R72,000, thus bringing the jumma back to what it was before the remission, and the former again has generally sub-let the villages. There are rumours, moreover, of *salamis* paid by farmers and sub-lessees, which, if true, involve the making good of such sums by the ryots. Anyhow, for some time large bodies of ryots continued to come in to me from several villages of the estate, complaining of the most extraordinary oppression on the part of the sub-leaseholders towards them. I do not place full reliance in everything stated by the complainants, for I have no doubt that the interference once exercised on their behalf has something to do with their coming here. At the same time, under the miserably loose system with which the Rajah's affairs are managed, I have a conviction that there is fire where there is so much smoke. Under the circumstances, and, as I was not particularly desirous of taking a matter of this kind out of the hands of the proper courts into my own, I contented myself with instructing the ryots to refuse extortionate demands, pay their rents into court, and complain at once if any high-handed measures were attempted. I also addressed the Rajah upon the subject, and warned the district officer not to allow illegal measures on the part of the farmers. I was first told that intimation was received by the ryots from the Rajah

that their matters should be attended to, thus tending to quiet them down. I now hear that a few enhancement suits have been started.

"In connection with this subject the remarks of the Judge of Bhagulpore deserve to be quoted. He observes:—'The very numerous cases of deposit of rent would appear to show that extensive efforts are being made by zemindars and their lessees to enhance the rents of their estates by other than legal means. The number of suits for enhancement of rent were very few.' These cases were only 18 in 1874-75 and 28 in 1875-76.

Paragraph 63.

"It appears that in the Bhagulpore district, at any rate, people are averse to avail themselves of the legal provisions relating to distraint of crops, but there exists a wholesale practice of distraining crops illegally. According to this system, when the crops are ripe, a peon or a sowar is sent to lay an embargo thereupon until the demands of the landlord are met. Strange to say, the villagers submit—a fact that can be accounted for upon no other theory than that the evil dates from years back, and has become a custom. The distraints are of two kinds: one is made for the realization of rents fairly due, and the other for compelling a ryot to pay an enhanced rent against his will, or to enter into some agreement with his landlord. The practice was before reported to exist in parts of Banka, but this year it was noticed in great force while the Collector was making his inquiries regarding scarcity in Soopool. The deputations of ryots from pergunnah Kheri further mentioned the same thing to me. The Magistrates of all districts have been advised to take the strongest measures to break down the system. Zemindars and others have been warned; and signs are not wanting that even the ryots, now that the subject has been taken up, see that there was something wrong in the old arrangement.

Paragraph 64.

"Different officers seem to hold diametrically different views in regard to the subject of the relation of landlord and tenant. Mr. Kemble thinks that the relations have been quite satisfactory. He observes:—'No doubt some amount of pressure is put upon ryots to make them pay their rents. If the zemindar were to wait till his ryots came to pay him of their own accord, and were to adopt no other coercive process than a suit for arrears in the civil court at the end of the year, he would, if he had no large amount of capital, be ruined, and his estate would be sold for arrears of revenue. If he were a capitalist, he might, in the course of a few years, manage to collect his rents with regularity, provided the number of civil courts were increased and the procedure accelerated.' Mr. Taylor, agreeing with Mr. Barraw, Subdivisional Officer of Soopool, thinks otherwise. The reason is apparent. In Purneah land is plentiful and ryots are scarce. The farming system is far more extensively in vogue in Bhagulpore than in Purneah, and under it the farmer who does not feel for the ryots tries to squeeze as much as he can from them. His first object is to gain over to his side the chief ryot of the village, and then to use him, by making him an exception to the rule of enhancement, as a weapon to grind down the poor. Illegal attachment and seizures of crops are consequently the rule with him.

Paragraph 65.

"The condition of the people is a subject on which much has already been written in the past few years. It is alleged that in Chumparun 75 per cent. of the population are hopelessly in debt, exclusive of the labouring population, who live from hand to mouth.

Patna Division Annual Report for 1875-76, paragraph 67.—(Mr. C. T. Metcalfe, C.S.I.)

"The greater number of the ryots are described as insufficiently fed, and the labouring class are said to be impoverished and without the means of maintaining their families. The average holding is about five acres, insufficient to enable the tenant to repay to the mahajun the grain advances of former years at from 25 to 50 per cent., and to pay the rent and maintain his family as well. The indebted tenant lives on the verge of starvation, wholly dependent on his mahajun to tide him through all difficulties, or, to use the words of the Collector's report, 'the people are generally in so low a state of health as to leave them without hope or energy, and to render it impossible for them to better their condition or to struggle with any unforeseen troubles or distress.'

"Of the people in his district the Magistrate of Durbhunga writes:—'There cannot, I think, be a doubt on the point that, as you advance from the Ganges to the frontier, the material prosperity of the people varies. The further northward you go, the less satisfactory is the people's condition. The district is purely agricultural, and on the character of the harvest depends the material condition of the great mass.

Paragraph 68.

"'There are, in addition, causes of an artificial nature which combine with the natural causes to render unsatisfactory the material condition of the people of Mudhoobunnee. These artificial causes have been so thoroughly ventilated in Mr. Geddes' report (in which I generally concurred) and in subsequent reports that have been furnished to you, that it seems needless to go over the whole ground again. It will suffice, then, for me to say here, that not alone to a succession of bad years and adverse harvests is due the present unsatisfactory condition of the Mudhoobunnee ryots, especially in the eastern portion of the subdivision.

Paragraph 72.

"'These causes, added to others, such as excessive enhancements, irregular realizations on their own accounts practised by zemindari amlah, have helped to bring about the present unsatisfactory condition of the people.'

"In Gya it is the case that rents are not high, while the poppy is an exceptionally paying crop. The system of payment in kind is general, and arbitrary enhancements of rents are said to be few; but it is admitted that there are perpetual quarrels between tenants and their landlords as to the division of the crops, and, when parties are hostile, the landlord refuses to allow the crops to be cut, thereby damaging the same, and then coming down on the ryot for the full value of his share in the civil court. The people are well off as a rule, though many are deeply in debt.

Paragraph 77.

"In particular, the Lieutenant-Governor has had occasion to observe that in Behar the exercise by the landlord of the power of distraining the ryots' crops is carried to a degree clearly beyond the letter and spirit of the law, and beyond the actual practice in Bengal. The question has for some time past been causing anxiety. It may be that the procedure of distraint locally adopted in Behar has the prescription of long-established usage; still, as it is illegal, its modification is only a question of time, for sooner or later the ryots will realize the legal aspect of the case and will seek redress. The Lieutenant-Governor has accordingly directed district officers to warn landlords, as occasion shall arise, that the law imposes conditions which cannot be disregarded, and that crops cannot be distrained save under the provisions of Act VIII of 1869. In the large estate of Durbhunga, too, it has been ordered that the provisions of the law of distraint are not in any way to be exceeded. Doubtless, if a good example can be enforced in this estate, an effect will be produced upon neighbouring estates.

Patna Resolution for 1875-76, paragraph 17.

"The Lieutenant-Governor has convinced himself by personal observation that the condition of the peasantry in those tracts of the estate which have suffered from drought is low; that a certain proportion of the land has fallen out of cultivation; and that many persons out of work have gone to seek livelihood elsewhere. A careful enquiry has brought some difficulties to light which are now being remedied, and in many tracts arrears of rent have been remitted, and current rents revised. In other tracts where wholesale remissions of rent have not been necessary, the current rents are now being revised as a temporary measure.

Paragraph 19.

42. Proposals were on various occasions made, chiefly by Government officers, for putting the Agricultural Disputes Act in force in the districts of Hooghly, Midnapore, Pubna, Noakholly, Backergunge and Tipperah; but in fact it ran out its time without ever being brought into operation. The Collector of Dacca reported that the mere fact of its existence in the Statute Book exercised the tranquillizing effects desired. But there were other reasons why it was not enforced. The Act as framed only allowed the Government to interfere on the application of either the landlord or the ryots, and not otherwise. The Secretary of State himself had pointed out that this restriction would probably rob the measure of much of its efficacy; but Sir Richard Temple was anxious to avoid the appearance of Government interference with the action of the civil courts, and determined to try first how a partial scheme would answer. The landlords as a body were, however, suspicious of the results of any application for settlements of rents under the Act, and the ryots were probably unaware of the very existence of the law, and trusted as before to their own power of passive resistance or active combination. Proposals for the application of the Act came therefore as a rule only from Government officers interested in the peace of their districts, but who had no *locus standi* under the law. Again, the present Lieutenant-Governor held that the Act could only be brought into operation in cases where actual agrarian disturbance was either present or seriously threatened. But the district officers were everywhere alive to the importance of preventing disturbance, and no case arose in which they failed to meet and repress the first beginnings of disorder. Special police are always quartered upon villages where zemindars and ryots came to open blows. In some villages in Pubna such parties of police were employed throughout the greater part of 1876 and 1877, and again in 1880. These were the same tracts as were disturbed in 1873, and the local officers in 1880 reported that the disputes were still smouldering and liable to break out at any time. In 1878 things became so bad in one notorious estate that the Magistrate applied to the civil court to attach the property under Regulation V of 1812, and place it under the Collector. The application failed on technical grounds, and all that could be done was to maintain special police in the neighbourhood and watch matters closely. But the history of these cases proves incontestably that in Pubna, at any rate up to last year, the rent question was as burning as ever *.

* While this memorandum is being written, a fresh application from the Commissioner for special police in Pubna is submitted, the Magistrate reporting that the conditions of the dispute are the same as ever, and disturbances would be certain to break out if the force was withdrawn.

43. In one case strong pressure was brought to bear upon Government by a late leading member of the British Indian Association to put the Agrarian Act in force for his own special benefit. Rajah Digumber Mitter, C.S.I., came up to the Lieutenant-Governor in 1878, declaring that it was utterly impossible, under the existing rent-law, for a landlord to get a fair rent assessed upon his lands, or to recover from his ryots rents at rates other than they chose to admit. On an estate recently purchased by him in Backergunge, he stated that the ryots had combined to resist the demands of his men, and he would only be able to realise his rents by suing every one of them in detail. On enquiry, it was found that any tendency to open violence had been satisfactorily and promptly suppressed by the authorities, and this being so, the Lieutenant-Governor declined to put the Agrarian Disputes Act in force. But the case brought out very clearly the dissatisfaction felt by the zemindars, at any rate, with the ordinary rent-law in a district like Backergunge, where the ryots are strong and prone to combine.

44. The true reason why rent disputes came generally to be in abeyance during the currency of the Act was no doubt owing to the fact that, having provided the Government with the temporary means of meeting exceptional cases, Sir Richard Temple took up at once the further question of amending the ordinary rent-law, and this question has been under continuous discussion and consideration ever since the Agrarian Disputes Act was passed—a fact of which both ryots and zemindars have been made thoroughly aware Both sides have therefore, in fact, been awaiting the action of Government, and hence the general lull to which the British Indian Association now appeal as evidence that no desire exists anywhere for an amended law. There is ample evidence that all the elements of disturbance are as really existent as they were in 1876. It is in fact absurd to suppose that in less than four years, without any special change in the circumstances of either one side or the other, a radical revolution of feelings and relations should have quietly taken place as between rent-receivers and rent-payers in every district of Bengal.

45. In his Administration Report for 1875-76 the Lieutenant-Governor (Sir R. Temple) made the following general remarks upon the rent question:—

"It is to be borne in mind that the last Rent Act for Bengal (VIII of 1869) clearly lays down the conditions under which alone the rent of an occupancy ryot can be enhanced. But it does no more than this. It does not prescribe any rule, nor even any principle, upon which the enhancement is to be determined. The consequence is that whenever a dispute arises, the parties cannot form any idea as to how it will be decided. The courts do not, indeed cannot, know how to decide; and the end is that no real decision can be attained. It follows, then, that no enhancement is lawfully adjudged, and consequently the landlord is strongly tempted to obtain by illegal means what he regards as his due. This again produces resistance on the part of the ryot; and if many ryots are implicated, then some union or other combination is formed, which ends in a general withholding of rents by the tenantry, and an attempt at forcible exaction of it by the landlord,—in all which there lie the germs of agrarian disturbance. Thus there is an uneasiness abiding deep in the minds of both parties, and as it were an underground agitation going on, which we are not, though we ought to be, able to stop. The injury which must thus befall the landlord's interest is manifest. But as regards the economic and agricultural interest of the country, the injury to the ryot is still greater; for he cannot know how far, and by what calculation, his rent may be lawfully enhanced. He may have a notion that some enhancement may be demanded, and may yet be resisted with more or less of success, but only after a contest. But the liability to such an uncertain demand must be harassing to him, must detract from the value of his tenant right, must damp his zeal for improving his land, must make him chary of laying out his little capital upon it. Therefore it behoves the legislature to put an end to this uncertainty.

"It is not possible, under the circumstances of Bengal, that rents should remain unchanged. If the value of land is to increase with the rise of prices and the improvement of produce, it follows that there must be a moderate and gradual augmentation of rent throughout the country from time to time, enough to satisfy the rights of the landlord, while leaving a clear and liberal margin of profit to the ryot. If the material resources of the nation are to grow and expand; if the culture of new staples is to flourish—the jute of yesterday as it were, the tobacco of to-day, the flax of to-morrow; if the use of machinery is to spread, not only around capital cities, but also to the remote interior: if, in short, agriculture is to advance, then concurrently some augmentation of rent is to be expected, equitable doubtless, and consistent with the maintenance of a stable and valuable occupancy status for the ryot, but still augmentation. The very law itself, by prescribing the conditions under which rent may be enhanced, contemplates the possibility of such enhancement. It is too late now to recede from that position. Although the permanent settlement in Bengal did clearly imply protection for the tenantry, it did not promise that their rents should never be enhanced. Such a promise would have involved a special and perpetual subsettlement with the ryots,

which was in fact never attempted. Though the settlement virtually prescribed the established local rates (pergunnah rates) as guides, it yet did not stipulate that these rates should never be augmented as time went on. Nor were these local rates definitely ascertained and settled in the beginning; such an ascertainment would have been tantamount to an authoritative settlement of rents through the country—an operation which has not been, and doubtless will not be, undertaken.

"On every ground, then, there is a case for interposing by legislation while it can be dispassionately considered, and before the angry feelings on both sides shall become so inflamed as to render settlement almost impossible.

"Meanwhile, as the best rule that could be framed in the absence of any guidance from the law, the High Court devised what is known as the rule of proportion. According to that, the new rent should bear the same proportion to the value of the produce as the old rent bore to the old value of the produce, at the time when the rent was last fixed or at some subsequent period which may be taken as a starting point. But, although this rule may be the only one that could be put forth without resorting to legislation, still it is essentially defective and cannot be easily worked. The whole arena of contest is opened out as to what the value of the old produce of the land really was; and even as to what the old rent really was, inasmuch as there are no village records filed in any public office, and unless the ryot possesses the old receipts there is no one who holds a record save the zemindar, and his record would be disputed by the ryot. Further, it by no means follows that the old rent was right merely because it was the old rent. In the disputes which now arise it will be alleged that the old rent was faulty, and that a new rent ought to be determined on better principles. But the rule of proportion in a great degree stereotypes and perpetuates whatever faults existed in the old rent."

46. This general question of amending the substantive law of rent in Bengal was accordingly brought forward by Sir R. Temple in his minute of the 25th May 1875 in the following terms:—

"When I was preparing the Bill now before the Legislative Council, for transferring to the revenue officers the jurisdiction in rent disputes, under circumstances where agrarian disturbances might be threatened, it was represented to me that the Bill did no more than provide an effective procedure in cases of trouble, and contributed nothing towards the determination of the principles which should guide the local authorities in deciding these disputes; in other words, that the Bill related to procedure only, leaving the substantive law respecting rent and the relations between landlord and tenant exactly where it has heretofore been. This representation I knew to be quite correct. I desired to take up immediately the question of procedure and jurisdiction, as being necessary for the prevention of agrarian disturbances, which might at any moment threaten to arise. And I intended advisedly to avoid joining with this comparatively summary consideration, the questions which are frequently agitated regarding rent and regarding landlord and tenant; inasmuch as these questions are in Bengal perhaps the most difficult of all questions that can be raised, and must, if touched at all, occupy a long time and cause protracted deliberation, and might, even after all that, fail to arrive at a satisfactory solution. It would not, in my opinion, be expedient to defer rendering the procedure effective in circumstances of possible trouble and urgency, until we can achieve the as yet uncertain result of revising such an important law as the rent-law.

"Still, I bear in mind that many zemindars in Bengal are anxious that something more definite than anything which is now prescribed, should be laid down by law regarding the determination of the landlord's share in the produce of the land or in the profits of the cultivation, and that some of our best revenue officers hold a similar opinion—Mr. H. L. Dampier, for example, Secretary to Government and Officiating Member of the Board of Revenue. It is much more difficult to gauge the views of the ryots or the tenant class; but so far as can be gathered from indications of their views, it seems probable that they entertain a similar wish. The apprehension seems to be gradually gaining ground, that sooner or later there will be more or less of contest between landlord and tenant, as to the principles on which the rate or amount of rent should be determined. It is expected that such contest may begin in Eastern Bengal, and then spread to other places. Those who entertain this apprehension seem frequently to think that as these principles are but vaguely indicated in the existing law, they ought to be laid down by a new law; and that by such means alone can the relations between landlord and tenant in Bengal be peacefully settled. No doubt it would be very desirable to determine suitable rules by law, especially as tenant-right is growing so fast in Bengal and as the occupancy tenure is extending year by year to larger and larger numbers of ryots and cultivators. But the question at once arises—is such legislation practicable?

"It is not only that opinions conflict greatly upon the subject, but that local customs differ considerably. As shown in my minute of the 16th March last, published in the Legislative Appendix to the *Calcutta Gazette*, the really difficult class of disputes arises in reference to the question whether the value of the land and its produce has increased otherwise than through the agency, or at the expense of the ryot. All that was urged in the minute, and is still urged by me, is that when such disputes assume serious proportions likely to cause agrarian trouble, the revenue authorities are in much better position than the civil courts can possibly be to settle such disputes peaceably, and in some degree satisfactorily; and that, as things are, the only chance of obviating trouble is to vest the Collectors with powers accordingly. I certainly believe that in the main the Collectors would, under the guidance of superior revenue authority, arrive at sound and just conclusions. If they decide that under the circumstances the landlord is entitled to some increase, they will test his demand by the

counter-representations of the ryots, and after taking every care that moderation is observed towards the cultivator, they will generally be able to fix upon some rate which the ryots are prepared to pay, and which the landlord will accept: in this way an equitable compromise will in most cases be made. Still, I admit that the Collectors must often have some difficulty in defining the path which should lead them through the various considerations towards that conclusion. It is easy, perhaps, to decide that the value of the land has increased otherwise than through the agency or expense of the ryot. But then the questions present themselves—how much has it increased? To what share in such increase is the landlord entitled? If it be that his share in the increase ought to be the same as his share in the original profit of the cultivation, then what was that share? If the facts show such share to have been indeterminate, then how is it to be determined?

"Possibly some authorities or parties may consider that the landlord is not entitled to any share in the increased value of the land and its produce, and that such increase should be entirely for the benefit of the ryot. Now, every one will doubtless affirm that the ryots (especially the occupancy ryots, who are said to constitute the majority) are entitled to a large share in the increase, and should be carefully protected in the full enjoyment of it. But to affirm that the landlord is not entitled to any share would, of course, be a very different proposition, which might be discussed on abstract grounds, but would be difficult to maintain. At all events, the rent-law of 1859, which has now been in force for fifteen years, established the principle that the landlord is entitled to some share in the increase. When the law declared in 1859 that the rent of an occupancy ryot should not be raised unless under certain specified circumstances of ordinary occurrence, and re-affirmed this in 1869, it clearly contemplated that the landlord should have some share under those circumstances. The same principle has been repeatedly acted upon by the High Court of Judicature. We cannot, I think, recede now by any legislation from that principle."

47. Sir R. Temple proceeded to discuss various possible methods of determining rent, and the opinions of the Board of Revenue, of the Secretaries to Government, and of the Commissioners of Divisions, were invited upon these suggestions. The British Indian Association were also invited to submit their views, and the following was their reply:—

Dated Calcutta, the 10th March 1876.

From—Raja Jotendro Mohun Tagore, Hony. Secretary to the British Indian Association, Calcutta,

To—The Offg. Secretary to the Government of Bengal, Revenue Department.

I have the honour, by desire of the Committee of the British Indian Association, to acknowledge the receipt of your letter No. 160, dated 21st January last, together with annexures, inviting an expression of the opinion of the Association on the principles on which the rent of ryots with a right of occupancy should be fixed.

The Committee feel grateful to His Honor the Lieutenant-Governor for directing his attention to this vexed question. There has been so much written about it, and there is such a consensus of opinion as to the inefficacy of the present law in helping the courts in finding the principles on which the rent of an occupancy ryot is to be fixed, that the Committee deem it superfluous to point out its defects or shortcomings. For more than sixteen years Act X of 1859 has been in operation, and the decisions of the High Court upon which the rate of rent is leviable from an occupancy ryot have been so conflicting and varying, that, practically, suits for enhancement upon the grounds mentioned in section 17 of the Act have come to a deadlock. And, the Committee submit, this conflict of opinion has been solely due to the want of precision or definiteness in the law. It is therefore essential to the ends of justice that the law should be amended, and that the principles on which the rates of rent are to be fixed should be set forth clearly and distinctly so as to make both zemindars and ryots to come to a fair and unmistakeable understanding about their mutual rights and obligations, and thus to prevent litigation; and in the case of the institution of a suit to enable the court to arrive at an easy solution of the question at issue.

The present law is defective in so far as it applies to ryots with a right of occupancy. Act X of 1859 having conferred this new right, and having left the principles on which the rent of this class of ryots is to be fixed indefinite and uncertain, there have been so much misunderstanding, misconception, and mischief. The papers annexed to the letter under reply contain the proposals of different officers on the subject, and the Committee are inclined to think that if the difference between the rent paid by an occupancy ryot and that paid by the tenant-at-will, which they take to be the competitive rate, be adopted at the leases for settlement, a clear and definite principle would be arrived at. It is admitted on all hands that there has been of late years a considerable rise in the value of produce in consequence of extended commerce, improved communications, and other influences at work. The Committee annex an extract from their petition to the Legislative Council of India in respect of the draft Bill of the rent-law of 1859, giving a summary of the tenures existing under the prior laws, from which it will be seen that the occupancy right, as created by Act X of 1859, was not formerly in existence. Such being the case, tenants-at-will have suddenly acquired the right of occupancy,

and the process of conversion is going on rapidly, while the principles on which the rent of the class of ryots is to be fixed under the existing law are so indefinite and inefficacious, that unless the Legislature takes steps to remedy this state of things, the injustice from which the zemindar is suffering becomes daily more and more aggravated.

The majority of the present occupancy ryots having been in the position of tenants-at-will, the Committee submit that it would meet the ends of justice if an allowance were made to them in consideration of the occupancy rights conferred upon them by the Legislature on the principle which has been recognized in the Oudh Rent Act. Under the last-mentioned Act the rent of the occupancy ryot is fixed at 12½ per cent., or one-eighth less than the rent paid by the tenant-at-will. The Committee are, however, of opinion that this deduction is too low. They would recommend one-fourth or 25 per cent. A prosperous tenantry is a source of strength to the zemindar, and the Committee hold that enough ought to be allowed to the occupancy ryot to enable him to pursue his industry with reasonable satisfaction. The proportion of one-fourth of the difference to the ryot and three-fourths to the zemindar, in their opinion, would be fair and equitable.

The Committee do not think that it will be difficult to ascertain the competitive rates as a rule. Where the land is let out to a tenant-at-will by the landlord or the person in receipt of rent direct, it may be easily ascertained. Where, however, the lands are held wholly by occupancy ryots, the competitive rent may be ascertained by reference to the rate of rent paid by *kurfa* ryots cultivating under occupancy ryots or jotedars. Where, however, it cannot be ascertained in a particular village, it may be ascertained from the adjacent village. Thus the competitive rate may be ascertained in one form or other.

The Committee have adopted the principle of the competitive rate, because it is a fair test of the value of land. It is a sure indication of the share of the produce of the soil which the cultivating ryot usually receives; and where it is low, from whatever cause, the occupancy rent as a rule is also low. There is, therefore, no apprehension of a violent rise in the rent of the occupancy ryot by reason of its being regulated by the competitive rate. It is, however, observable that where the competitive rate cannot be ascertained, that is, in those districts where the tenants-at-will have been converted into occupancy ryots *en masse*, or where from other causes new lands are not often let out to tenants-at-will, or where the ryots may combine and resist payment of rent and thus defeat all enquiries for the ascertainment of the competitive rate, the Committee would recommend that the value of the gross produce of land on the average of the past three years (exceptionally bad years, such as those marked by drought or inundation being excluded from calculation) be divided between the zemindar and the occupancy ryot in the proportion of one-fourth to the former and three-fourths.*

The Committee submit that the present opportunity ought also to be taken to facilitate the recovery of rent by making necessary amendments in the rent law.

It will be seen that the Association had then no doubt whatever that a radical amendment of the law was called for in the interests of zemindars. (It is not necessary here to discuss the fallacies and misstatements of the letter with reference to the position of occupancy ryots, and the theory of competitive rents. The letter is quoted to show that on the necessity of amending the substantive law of rent the Association was at one with the Government and its officers in 1876.)

48. In his minute of the 18th April 1876, Sir R. Temple put forward his final proposals, which were briefly, that the difference should be ascertained between the rent of the occupancy and the average rent of the non-occupancy ryot in each district: that of this difference a certain share should be allotted to the occupancy ryot and the remainder to the landlord, and that the rent be adjusted accordingly; provided always that the rent of the occupancy ryot be fixed less than that of the non-occupancy ryot by 20 per cent., and that full allowance be made for the value of the ryots' improvements. He proposed to allow to occupancy ryots of 20 years' standing one-fifth of the above difference; to such ryots of 30 years' standing one-third; and to those of 40 years' standing two-thirds.

49. These proposals were widely circulated for report, but before all the replies had been received, Sir R. Temple, believing (somewhat too hastily) from what information had reached him and from conversations with zemindars and others that the suggestions were likely, if supplemented and modified, to receive tolerably general support, recorded his further minute of the 29th August 1876, and addressed to the Government of India his letter No. 2109T. of the same date, asking leave to bring in a Bill in the Bengal Council to amend or supplement the rent-law, and especially in the following matters:—

"For all these reasons, then, I propose to introduce into the Legislative Council of Bengal, in November next, or as soon after as may be convenient or practicable, a Bill, being

* *Sic* in original.

in continuation of, or supplementary to, the existing rent-law of Bengal, Acts X of 1859 and VIII (B.C.) of 1869, and providing specifically for the following matters :—

"*1st.*—In cases where an occupancy ryot is liable to enhancement of rent under section 18 of Act VIII (B.C.) of 1869, such enhancement is either to be regulated by the principle that his rent shall be less than the ordinary rent of a non-occupancy ryot by a certain percentage, from 20 to 25 per cent., or else is to be calculated on a certain proportion of the value of the gross produce, from 15 to 25 per cent., provided always that no occupancy ryot shall be entitled to claim under the foregoing rule any abatement from the rent which he has heretofore paid.

"*2nd.*—The definition of an occupancy ryot, as given in section 6 of Act VIII (B.C.) of 1869, to be somewhat extended, so as to include ryots cultivating under other ryots in certain classes of cases.

"*3rd.*—The right and interest of an occupancy ryot to be rendered liable to sale for default in paying rent and also transferable by private agreement.

"*4th.*—The process for realizing arrears of rent in undisputed cases to be simplified by the court or other deciding authority—Collector or other—being empowered, on application from the landlord, to issue a notice to the ryot, requiring him either to pay or to appear and show cause to the contrary; in the event of the ryot neither paying nor appearing, the court to order attachment and sale of the defaulter's property.

"*5th.*—The rents payable by tenure-holders or others possessing a permanent transferable interest in land, intermediate between the proprietor of an estate and the ryot—when not fixed by special agreement or by the circumstances of the tenures—to be determined according to a standard similar to that of the occupancy ryots, but more favourable by 10 per cent."

In submitting this he remarked—

"The precise proportion and percentage set down in the foregoing proposals would be much discussed as the Bill passed through the Legislative Council, and would very possibly receive modification. Indeed, if such a Bill is ever to be finallypassed, there must be some compromises between opposite views, especially on points of detail. I should be prepared to yield some points for the sake of carrying some enactment which would help to settle the disputes between landlord and tenant, with which some parts of the country have for some time past been threatened. And though I might be unable to carry all that I would wish to see carried, still I think that any measure of the nature proposed, even though shorn of some of its propositions, would be sure to strengthen the just position and the right of the occupancy ryots, while, on the other hand, it afforded the zemindars satisfactory means of determining and realizing their dues."

50. The reports received upon these minutes of Sir R. Temple contain a mass of valuable information on the whole rent question. Briefly speaking, it may be said that they went to show that the Lieutenant-Governor's proposal was impracticable in so far as it proposed to substitute for the customary rents of the greater part of Bengal, rents based upon the so-called competition rents of non-occupancy ryots. In many districts no such differing competition rents could be found. In some the non-occupancy rates were *below* those of occupancy ryots. All these reports were carefully considered eventually by the Rent Commission. For the purposes of this memorandum, it is only necessary to note that, however much difference of opinion there might be as to the shape which an amended law should take, there was a perfect agreement that an amended law was required. The zemindars of Eastern Bengal represented that "a re-settlement of the rent-laws of the country" was "urgently necessary." Their memorial (signed by every landholder of note in that part of the country) concluded thus—

"Under the circumstances mentioned in this memorial, your memorialists pray, first, that the present rent-laws of the country be altered with a view to facilitate due enhancement of rents and the prompt realization thereof; second, that the natural market or competitive rate of rent—such rate as any ryot would be prepared to pay for the land, subject to the condition that it be not higher than a certain maximum proportion of the gross produce—be declared to be the legal rent due from all ryots, without any deduction whatever in favour of ordinary occupancy ryots, or of those of 20, 30, or 40 years' standing; third, that the low rents paid by non-occupancy ryots newly settled in backward localities be not taken to represent competitive rates; fourth, that in cases where there is any doubt as to what the competitive rate is, 20 per cent. or one-fifth of the money value of the gross produce of land (taking an average, say of three years) be declared as the rent to be decreed; fifth, that it be provided that in no case the rent of a ryot be enhanced so as to be more than double the previous rate, and that, after once a ryot's rent has been enhanced, no further enhancement be decreed within five years; sixth, that a decree for arrears of rent be made to have the effect of one for

ejectment; and seventh, that some cheap, speedy, and effectual procedure be devised for the recovery of arrears of rent.

Baboo Joy Kissen Mookerjea, the leader now in the British Indian Association of the opposition to all change, wrote—

"The experience of several years of the operation of the present rent laws, and the opinions that have been recorded from time to time by the learned Judges of the High Court, and by other public officers, show the necessity of an amendment of those (rent) laws, not only as regards the enhancement of rent, but also as regards the collection of rent."

The Rajshahye Association, and many other native Associations and individuals, concurred in this view.

The British Indian Association, in their memorial of the 15th December 1876, while objecting to the particular proposals, and recapitulating at great length their own peculiar views of the native rights of landlords and ryots, remarked with reference to the existing law—

"The litigation which has followed this legislation, and the feelings which have flowed from it on both sides, have become a public scandal. A more important question cannot, therefore, engage the attention of Government at this moment than the consideration of the best means of making an end to this scandal, and putting the relations between the landlord and tenant on a fair and satisfactory footing, which would be fair to both parties."

51. Delays having taken place in obtaining the orders of the Secretary of State upon his proposals (and possibly also in view of the fact that such general disapproval of them was expressed by those consulted), Sir R. Temple, on the 5th January 1877, shortly before leaving Bengal, recorded a minute, proposing to go on for the present only with the procedure sections of the draft Bill that had been framed, in order to furnish the zemindars with a "simple mode of procedure for realizing undisputed rents."

52. This was the position in which Sir A Eden found the question on his taking up the Lieutenant-Governorship. He was not then prepared to take up the difficult general question of enhancement of rent, although there could (he admitted) be no doubt that it lay at the bottom of all the disputes between landlord and tenant in Bengal; but as the zemindars made a great point of the delays thrown in the way of the recovery of even undisputed rents by the dilatory action of the civil courts, he thought that if they would be content to recover by summary process only rents admitted by the tenants and actually paid by the latter in former years, it might be possible to devise a procedure for the immediate relief of landlords, while waiting for further light on the solution of the general question. In the very first letter, however, in which the Lieutenant-Governor laid his views before the Government of India, he expressed himself in favour of, at the same time making the right and interest of, the occupancy ryot saleable in execution of decrees, and transferable by private agreement. The Government of India asked that this last point might be referred to Revenue officers and fully discussed, but sanctioned the introduction of the measure suggested by the local Government. (Revenue, Agriculture, and Commerce Department, No. 316, dated 28th April 1877.)

53. A Committee, consisting of Messrs Reynolds and Mackenzie, Maharajah Jotendro Mohun Tagore, Rajah Digumber Mitter, and Baboo Kristodas Pal, was convened and directed to consider the details of a summary procedure of the kind required. In discussing the question of enlarging the powers of the zemindar, the Committee (in which, as will be seen, the zemindari interest was influentially represented) found that it was impossible to do so until the ryot was protected against the action of unscrupulous landlords, (1) by the creation of quarterly days of rent payment in lieu of the present loose system of nominal monthly instalments for each of which, under the present law, a landlord can sue, and (2) by the introduction of a proper system of compulsory counterfoil receipts. After much discussion, and a conference between the Lieutenant-Governor, representatives of the British Indian Association, and the leading Revenue officers of Government, a Bill was drawn up in February 1878, providing a summary procedure for the realisation of arrears of rent not over twelve months' due, when it was shown, to the satisfaction of the court, that rent at the rate alleged had actually been paid for the

year preceding, or had been accepted in writing by the tenant. Provision was also made for quarterly rent instalments, counterfoil receipts, registration of transfers of occupancy rights, sale of occupancy holding in execution of rent decrees, and other matters; the general object being to improve the ryot's position, while giving the zemindar the remedies he desired against recalcitrant tenants.

54. While the Bill was under reference to Revenue officers and others, the Lieutenant-Governor addressed the British Indian Association again on the subject of making the occupancy tenure generally transferable in the following letter:—

"In your letter No. 62 of the 8th October last, objections are taken to making a ryot's occupancy tenure generally transferable, on the ground that to do so would "vest the ryot with the status of co-proprietor;" but it is proposed by the Association to legalize the sale of occupancy tenures in satisfaction of decrees for rent at the option of the zemindar; and it is suggested that, where a zemindar does adopt this remedy, a tenure once so sold should be declared to have become a transferable tenure. I am to ask for a further expression of the views of the Association in connection with this question.

"The Lieutenant-Governor will not enter into a discussion of the theory enunciated by the Association, to the effect that the creation of the occupancy tenure by Act X of 1859 was an encroachment upon the rights of the landlords under the permanent settlement, though he considers this open to question both historically and legally; but he desires me to point out that, as a matter of fact, the transferable character of these tenures has been affirmed by local custom in very many districts; nor has it ever been held or alleged that such a transfer implies the recognition in the ryot of any rights amounting, as the Association put it, to co-proprietorship. The tenure is transferred as an occupancy tenure, and the landlord has the same remedies against the new tenant, and the same powers of enhancement, that he had against the old.

"The Lieutenant-Governor does not understand that the Association propose to interfere with local custom, where this has recognized the transferable character of occupancy tenures; but they propose to limit the recognition in other cases to tenures sold in execution at the request of the zemindars. Now, apart from the fact that the existence in many places of a local custom of wider application than the direct provisions of the law is likely to lead to conflicts of evidence in the courts, the Lieutenant-Governor thinks that the suggestions of the Association are open to question from another point of view. It is probable that in most instances occupancy tenures, sold in execution of decrees, will be brought in by the decree-holder—the zemindar himself. In that case the tenure would practically lose its characteristics and lapse into the residuum of the zemindar's "khamar" or "nij-jote," being broken up and re-let in portions on such terms as the zemindar chose to exact. A large landlord persistently following out the policy of buying up such tenures would probably very soon change the whole face of his property, and reduce his tenantry generally to the condition of mere tenants-at-will. The Lieutenant-Governor is not satisfied that this is a policy which the Government can properly be asked to support. In many parts of the country the consequences might be serious both for Government and the zemindars.

"On the other hand, it does not appear that the general recognition of the transferability of the occupancy tenure would have any injurious effect upon the position of the zemindars, while it would certainly tend to improve the condition of their tenantry, and to give them a greater interest in the improvement of their lands. The Lieutenant-Governor can imagine nothing so calculated to improve the system of cultivation and the value of an estate as permanency and security of the ryot's tenure. The zemindars fully appreciate the value of security of their own tenure, and justly attribute to it the most beneficial results, but appear to be unable to see the advantage of extending it to the lower grades of holding. The provision that all such transfers must be registered in the zemindar's sherishta, and that no transfer of a fractional part of a jote need be recognized, would protect the landlord's legitimate rights; while, as before remarked, the transfer would carry with it all the liabilities and incidents of the occupancy tenure.

"If, after securing transferability of tenure to the occupancy ryot (a right which he already possesses by custom in many parts of the country), provision were made in the law to prevent his converting himself into a mere middleman, and for strictly regulating the character of the subletting to which an occupancy ryot must limit himself, it would seem that a great improvement would be effected in the law of tenant right in Bengal, such as would tend to raise the value of property and increase the landlord's security for his rent.

"I am to ask that the Association will re-consider the last part of their letter under notice with reference to the foregoing remarks."

55. The Association, in their letter of the 20th November 1878, accepted, though with hesitation, the proposal that "the transferability of the occupancy tenure, restricted to the cultivating class, should be recognized by law," and the whole question of an amended Bill was laid before the Government of India in Bengal Government's letter No. 3060 of the 11th December 1878. The measure was shortly afterwards introduced into the Bengal Council. The Association quote with approval from the speeches of the official mover

where this seems to serve their purpose, but they fail to quote passages which show that, as regards the form of summary procedure suggested, grave doubts were entertained from the very first; that, as regards the rights and position of the ryots, the same views were enunciated in Council without objection, to which exception is now taken by the British Indian Association; and that even then the general amendment of the whole rent law was announced as a measure that would shortly be taken in hand. The following passages from Mr. Mackenzie's speech, when introducing the Bill, may here be quoted to illustrate these points:—

The Bill, which in this respect follows the suggestions of the conference alredy referred to, proposes that, where a landholder has been actually in receipt of rents at a certain rate, he shall be able to recover arrears at that rate, and when they are not more than twelve months old, by moving the civil court to put in force a summary procedure similar to that embodied in the Bills of Exchange Act of 1866 (now chapter XXXIX of the Civil Procedure Code). It will be seen that under this procedure, the landlord has only to file his plaint to secure the issue of a notice to the defendant calling upon him to obtain leave from the court, within fourteen days of the service of the notice, to appear and defend the suit, failing which the plaintiff will at once obtain a decree. Leave to defend will only be given on the defendant's paying into court the sum demanded, or on his satisfying the court that he has a defence, and on such terms as to security, framing and recording of issues or otherwise, as to the court may seem fit. No appeal will lie from the summary decree on the part of the judgment-debtor unless he deposits its amount with costs, though the court may, under special circumstances, set aside its own decree and go into the merits of the case.

Now, Sir, it is manifest that this is a most summary, and, as it may seem to some, even a severe procedure; and I have heard some doubt expressed as to whether, in applying in their entirety the provisions of the Bills of Exchange Act to the recovery of arrears of rent, there has not been a tendency to overlook a radical distinction between the classes of facts dealt with in either case. A dishonoured bill of exchange or promissory note carries, it may be said, its history on its face; and it is only when a defence is raised, which goes absolutely to invalidate the written document itself, that a court would hesitate about giving a decree for the sums thereby clearly shown to be due But the mere assertion by a landholder in a plaint that the defendant owes him so many rupees as rent is, it has been urged, hardly a sufficient starting of the case to justify the disabilities under which the defendant is placed by the provisions of this Bill, or to shift so entirely the *onus* upon the ryot. The Council will, however, observe that by section 9 of the Bill it is now provided that no suit shall be entertained under it except where it is shown to the satisfaction of the court that rent at the same rate as that alleged to be due has been paid in respect of the holding for which it is claimed some time within the three years immediately preceding the period for which it is claimed, or that the tenant has agreed by a written engagement, which is still in force, to pay rent at the rate claimed. If this section is not sufficient to show that the landlord must, with his plaint, produce *primâ facie* proof of privity between himself and the defendant, the Select Committee will doubtless amend the Bill. It will be open to them also to consider whether *primâ facie* proof of the defendant's indebtedness ought not also to be required.

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In deference to the doubts felt by some, and especially by the British Indian Association, the Bill submitted to the Government of India in February last provided only for making the occupancy tenure transferable in execution sales for arrears of rent.

The whole question has since then been maturely re-considered. I shall hope to place in the hands of the Council very shortly a selection of papers bearing upon this point, in which will be found, I trust, sufficient vindication of the Government action in now deciding to propose that the tenure shall be generally transferable as well as heritable, provided only that the transferee is a genuine cultivating ryot. I should wish, however, upon this occasion to be allowed to urge upon the Council, on my individual responsibility, certain considerations which seem to me to support and justify the present policy of the Government in this matter. We are constantly told now-a-days that the occupancy ryot is merely a metamorphosed squatter, an excrescence created by modern law, whose very existence is an encroachment upon the rights of the zemindar, and the recognition of whose tenure amounts to a practical confiscation of zemindari property. Now, I am perfectly willing to admit that the rule of prescriptive occupancy, introduced by section 6 of Act X of 1859, had the effect of conferring valuable rights upon a class of ryots who, under the law as it stood up to that time, and under the custom of the country as it had always been, had practically no rights. I am ready to admit that the section was based upon a misconception, and was justified by a reference to a supposed state of things in the North-Western Provinces which had really no existence. But those who press this argument too often forget that, inasmuch as the only other privileged ryots recognized by Act X are those who have held or claim to hold at fixed rates from the time of the permanent settlement, it is clear that all that vast body of resident cultivators who had rights of occupancy in the soil, but who were not protected absolutely from enhancement of rent, are now comprehended within the term "ryots having rights of occupancy." I believe myself, indeed, that the margin of squatters and tenants-at-will, incorporated with this class by the operation of section 6, is in most districts so small as to be actually inappreciable. It is absurd to suppose that all the cultivating millions of Bengal, except the few thousands having *maurusi mokurari* rights, went wandering annually over its plains and *churs*, claiming only the rights of outside

paikashts until they were taken up and settled by Act X of 1859. In deciding what the occupancy tenure is, and what the occupancy ryot ought to have, we must consider what position the *normal* cultivating ryot of Bengal held with reference to his zemindar. Let me define it in the words of Holt Mackenzie written in 1832: "The great body of resident cultivators (he said) possess a fixed hereditary right of occupancy in the fields cultivated by them, or at their risk and charge, their tenure being independent of any known contract. They cannot justly be ousted so long as they pay the amount of value demandable from them, that being determined according to local usage—sometimes by fixed money rates, or rates varying with the quality of the land, or the nature of the crop grown—sometimes by the actual delivery of a fixed share of the grain produce—sometimes by an estimation and valuation of the same—sometimes by other rules; and what they so pay is in all cases to be distinctly regarded as the *Government* revenue or rent, whether assigned to an individual or not, and not depending on the mere will or pleasure of another. In Bengal Proper they are usually called khoodkasht ryots, *and by this class of persons I believe that the greatest part of the lands in the province is occupied.*"

Again, in Sir W. Muir's admirable 'Notes on Tenant Right in all parts of India,' I find that great authority stating that, after taking a comprehensive and exhaustive view of the question throughout India, except the Gangetic valley and adjoining tracts, he felt entitled to draw the conclusion that "over the whole country there exists the general law of ryots' right. The individual occupant is either a proprietor or a permanent holder." Coming now to Bengal (he continues) a careful retrospect leads to two conclusions—first, "that tenant right existed in Bengal very much as it did in Central and Southern India; and second, that the zemindar of Bengal had more the features of an official than of a proprietory origin." "The limitations, therefore, prescribed in the Bengal regulations upon the authority of the zemindar were entirely in accord with the tenure actually prevailing * * * *." What he means is this, that although by the permanent settlement Government has changed entirely the status of this *quondam* official zemindar, and given him an estate in the soil, and proprietory rights which it would now be folly to deny, there are still other classes having estates in the soil which no Government measures can justly confiscate, and which every honest Government is bound to recognize. Its duty is to reconcile, if possible, the rights of all. "The strength of the resident cultivator's title in Bengal (goes on Sir William) assessed though he was at (what are sometimes termed) full market rates, and indeed at rates often higher than those of the non-resident tenant-at-will, is testified on every hand." "I am satisfied (he concludes), both from analogy and evidence, that the khoodkasht or resident cultivator of Bengal was the ordinary type of hereditary or proprietary ryot common throughout India." Dealing further on with the state of tenures in Benares, he finds that the ryots' tenure there "originally resembled in its permanency and substantial character that of Bengal." "It is possible (he says) to conceive that the two systems, that of the North-West with a strong proprietory and a weak ryottee title, and that of Bengal with a weak proprietory and a strong ryottee title, met each other in the province of Benares." What the result was we find in another place. "In Benares (he accordingly tells us) it is common for cultivators not merely to sublet, but to mortgage, and even to sell their holdings. Act X of 1859 seems to have had a rather unexpected effect in checking the practice of sale, the idea gaining currency that under that law the transfer of a cultivating tenure was not valid without the zemindar's sanction." In fact, throughout his argument he takes the strong permanent occupancy right of the Bengal ryot as the standard by which to measure the position of the village proprietors and cultivating ryots in the North-West; and that such a course was warranted, is clear from various papers appended to his minute, which 'seem to show plainly that the right of transferring hereditary cultivating tenures prevailed in most of the permanently-settled districts both of Bengal and the North-Western Provinces.' From these and numerous other passages to which I might refer, and from a careful study of the Regulation Law, it might, I think, very fairly be inferred that Act X by lumping together these permanent resident ryots with the new prescriptive tenants created by its own terms actually did the former a very grievous wrong. The legalized squatter has been come to be taken as the type of the whole. The revenue system of Bengal to a great extent withdrew from the cognizance of Government officers the actual relations between the zemindars and their under-tenants, and we have no means of tracing accurately the history of tenant right during all the years from 1793. There is, however, a mass of evidence with which I shall not trouble the Council, especially in connection with discussion regarding the effect of revenue sales, all tending to show that in spite of the way in which Government neglected him—in spite of *Haftam* and *Panjam*, and many other regulations in which Government, fearing for its revenue, ignored his customary rights—in spite of all the grinding of his zemindar—in spite of Act X and its provisions for enhancement and eviction, the resident cultivator has maintained even to the present day a practically permanent interest in his holding, which he has in nearly every district of Bengal been able to sell and transfer. I find in the minutes of the High Court Judges upon the working of Act X (written in 1864) the following passage from the pen of Mr Seton-Karr:—"That ryottee tenures of all sorts are constantly attached in execution of decrees of the revenue and judicial courts; that such holdings, whether of tenants with absolute and hereditary rights, or of tenants with mere rights of occupancy, are put up to sale by scores and hundreds all over the country, is a fact that admits of no question whatever. It is equally certain that they have a positive marketable value and often change hands by private transfer—sometimes with the consent of the zemindar, and sometimes in spite of all his opposition." I hold in my hand returns of sales under civil court decrees, which show that in every district in

the Lower Provinces sales of occupancy tenures have been effected without dispute. It is true that the rent law does not specifically recognize this right, and that the civil courts interpreting the letter of Act X have frequently denied it. My contention is that, in proposing now to recognize it by law, Government is not running counter to traditionary rights and customs, but rather seeking to establish these; restoring in fact the old common law of Bengal. I discovered only this morning that in 1865 the Government of Bengal had come to identically the same conclusion.

That the proposal is on other grounds desirable is, I think, capable of proof. We are constantly told that the crying want of the country is agricultural improvements. The great zemindars have in so many cases converted themselves into mere annuitants that it is not worth their while to attempt this. The smaller zemindars and intermediate tenure-holders have not as a rule the capital to carry out large schemes of the kind. It is mainly to the cultivators themselves, therefore, that we must look for the introduction of improved staples and the construction of wells, petty irrigation channels, and the like. At present the ryot has absolutely no inducement to begin any such improvements. Make, however, his holding transferable, and his view of the situation must surely change. He will spend, and even borrow to spend, having now some chance, even if he default in his rent, of recovering by the sale of his tenure some portion of his outlay. If he has to borrow from his mahajun for any purpose, he will do so on better terms, being able to offer more solid security. To those who think that human nature in India is not like human nature elsewhere, and that a cultivating ryot is never likely to seek to improve even a property that he can call in sense his own, I would cite the facts related by Sir W. Muir of the zemindari of the Rajah of Benares. Those Rajahs, with far-seeing wisdom, set themselves to foster the occupancy rights of their ryots, recognizing the transferable nature of their tenures. The consequence is thus described: "The ryots' property in the soil (in the Rajah's family domains) is so valuable that it fetches sometimes above Rs. 100 per beegha. The occupant expends labour and capital on his holding. The country thrives; no part of the North-West is more prosperous, and the Rajah has his reward in a secure and flourishing revenue." The whole history of jungle-booree clearances in Bengal, the condition of vast tracts in Backergunge, Noakholly, Chittagong, and many other districts at the present day, proves incontestably that there is no more zealous pioneer, no more assiduous digger and improver of the soil than the Indian ryot when his tenure is assured, and that, too, even when his rent seems almost crushing. I need not refer to the mass of evidence showing the working of peasant proprietorship in many parts of Europe. The state of things in Bengal is not identical with that, and the comparison might lead to misconception. I do not, as I have already said, seek to blink the fact that the zemindar has in Bengal been granted an actual estate in the soil, and I should be the last to tamper with any of his known and acknowledged rights. But all history and all legislation goes to show that though an actual, he is not an absolute, proprietor, except as regards his *seer* or private lands, and my contention is at present that the resident ryot has also an estate in the soil, which it is worth our while to define and worth our while to develope. My belief is that this policy is good both for zemindar and ryot. My hope is that the zemindars will themselves admit this. We have, I say, every reason to believe that to recognize the transferable character of the occupancy ryot's tenure in Bengal will improve his position in many ways, and that he will in turn improve the land. He has now had brought to his door that system of primary education for which the name of Sir G. Campbell will be ever honoured. He has throughout many parts of Bengal benefited for some years past by the famines and misfortunes of his neighbours, and by the new and growing demand for a very profitable staple. His standard of comfort bids fair in every way to rise, and it seems the duty of Government to do what it can to help and accelerate his material not less than his moral welfare.

* * * * * * * *

These are the chief provisions of the Bill which I have the honour to introduce. They cover, it will be seen, a good deal of ground, and effect a very important and far-reaching change in the Rent Law as it now stands. It would perhaps have been more satisfactory had we been able to take up that rent law as a whole, and had we, leaving the question of the grounds of enhancement to be separately dealt with in the manner indicated by me on a former occasion, amended the rest of the law thoroughly upon all other points. It is felt, however, that this, though a most necessary, would probably be a very lengthy task, and it is deemed better to give as soon as possible assistance to the zemindar in collecting his rents and those legal cesses upon land which are realizable therewith. Next session it may, I hope, be possible to take up effectually the general amendment of Act VIII (B.C.) of 1869.

No exception was taken by the zemindari members of the Council to the statements regarding khoodkasht ryots. Indeed, the Hon'ble Kristodas Pal admitted freely that the khoodkasht ryots of all degrees always had an occupancy tenure.

56. A large number of reports upon the Bill was received by Government, from which it was very manifest that it was impossible to touch the question of a summary procedure without raising all sorts of collateral issues that did not admit of satisfactory handling in connection with a measure of such partial scope. It is unnecessary here to do more than reproduce the preliminary reports of the Select Committee of Council to whom the Bill was referred, and the letter of this Government to the Government of India, No. 832-337, dated 3rd

April 1879, submitting that report, and suggesting the appointment of a Rent Commission.

The members of the Select Committee appointed to report upon the Bill to provide for the more speedy realisation of arrears of rent, and to amend the law relating to rent, submit the following preliminary report.

The Committee have considered the provisions of the Bill. They have taken it up without waiting for the criticisms and suggestions of the officers of Government and others who have been consulted, because they thought that it would eventually save time to clear the ground as far as possible, and endeavour to come to some understanding among themselves as to the principles and details of the measure. It might also, they held, save the time of mofussil officers to have before them at an early date an amended draft of the Bill for consideration.

The individual members of the Select Committee, in making this preliminary report, reserve to themselves the right to modify, change or reject each and any portion of the draft Bill as now amended. There is still considerable difference of opinion in respect of many of its provisions, and one of the main object of this report is to invite attention to the points of doubt, a final settlement as to which is not likely to be arrived at until all the mofussil reports have been received and duly considered.

Part II of the Bill relating to the "summary procedure for realisation of arrears of rent" has been entirely re-cast, so as to provide clearly for the various steps to be taken under the special procedure contemplated. The plaintiff has been required to make out a *primâ facie* case before the issue of summons in the form contemplated by the Bill, and the provisions of Act X of 1859, requiring that he should either appear in person or cause the attendance on his behalf of some one acquainted with the facts of the case, have been revived. The simple mode of verifying the plaint laid down in Act X has also been introduced. An amended form of summons to the defendant has been given in the schedule. By section 9 of the amended Bill, if the court refuses to give the defendant leave to defend, it must nevertheless take down his statement and record the reason for its refusal. By section 11, a defendant against whom a decree is given under section 10, may appeal on depositing the amount of the decree in the Appellate Court, or giving security, as the court may direct. The decree-holder is not to be allowed to draw the amount of any deposit made, pending appeal. The majority of the Committee hold that it is sufficient for the landlord to have his rent practically secured to him without making over to him moneys he may have to refund. The Committee have provided that a landlord claiming arrears at enhanced rates may sue under this Bill for so much of his claim as represents the rent at the old rates, and get a decree for that portion of his demand at once, without prejudice to the continuation of his suit under the ordinary procedure in respect of the enhanced rates. On the whole, the summary procedure provided by this part has now been put upon a reasonable basis for detailed discussion, fair to both parties and suited, it may be hoped, to the class of suits that will have to be dealt with under it.

Some of the members of the Committee feel, however, with reference to this whole question of a summary procedure for recovery of arrears of rent, that its practical success or failure will depend entirely upon the intelligence and impartiality with which it may be eventually worked by the civil courts. If they could feel sure that the aim of the Legislature would always be borne in view, and be worked up by the courts, Part II of the Bill would, they believe, do much to remedy the difficulties of which landlords now complain without pressing unduly upon tenants. At the same time it may, they think, be worked in such a way as to be unfair to either party.

The Committee as a body do not see their way at present to providing a summary procedure that shall be free of this danger. The only absolutely safe way of settling disputes about rent is to try out the issues between the parties in a regular suit. It is, of course, possible by legislation to raise a presumption of law in favour of either landlord or tenant as the case may be, and either party would probably be glad to secure such a weapon against the other. The Legislature can, however, hardly be expected to satisfy such a one-sided demand.

Part III—The Committee have had much discussion with reference to the limitations under which occupancy tenures might be declared transferable so as to avoid the risk of money-lenders or hostile zemindars buying up such tenures in an estate either for purposes of speculation or annoyance. It is perhaps impossible absolutely to guard against such occurrences, which may indeed take place even under the present law, though it is believed they are by no means common in Bengal. In section 15, however, a definition is given of what should constitute a right of occupancy under this Bill, calculated, it is thought, to reduce the chances of this evil to a minimum, and the question of subletting has also been considered with reference to the same difficulty. So far as tenures are concerned, which owe their recognition only to Act X of 1859, it is suggested that there is no reason why the practice of subletting without the consent of the zemindar should not be absolutely forbidden, and why subletting without such consent should not involve forfeiture of occupancy rights. This, read with the definition of an occupancy ryot, should perhaps effectually prevent the sale of this class of tenures to persons who do not intend to cultivate them *bonâ fide*. Some of the members of the Committee would have preferred to see the same disability to sublet extended to all transferable occupancy tenures. The practical effect of such an extension would, however, in the opinion of others, have been to confiscate the rights of numerous cultivating tenure-holders of old standing, who now, by the custom of the district, both transfer and sublet their lands without any reference to their zemindars. Section 20 has, therefore, been inserted to save such tenure-holders. There can be no doubt that in tenures of old standing the right

of subletting has always been exercised. It has been suggested that a holding for twelve years before the commencement of Act X of 1859 should raise a presumption of the existence of this right. But the Committee feel that they cannot deal effectively with this question of subletting until they have received and considered the reports of mofussil officers.

The provisions of section 7 of Bengal Act VIII of 1869 have not been re-enacted in the amended draft, as they refer to matter belonging more strictly to the law of contract. Some of the Committee also hold that the local law of rent should not specifically recognize the possibility of landlords and tenants contracting themselves out of their statutory rights.

The procedure for the registration of transfers has been made more complete and precise.

A section has been inserted declaring that all transferable under-tenures are hypothecated for the rent due thereupon, following the principles laid down in the Full Bench Decision in XXI, Weekly Reporter, page 94.

In Part IV, some members of the Committee wished to repeal sections 29 and 30, and some to make the award of damages compulsory in every case contemplated by the section. As a compromise, the sections have been left as they are, except that under section 29, damages may be awarded whether claimed in the plaint or not. Sections 31 and 32 have received slight verbal amendments, and a clause has been added enabling a landlord to draw rent deposited in his name by a tenant without prejudice to the rights of either party in respect of the nature of the tenure or holding.

In Part V, section 33 has been amended so as to make the rent instalments quadrate better with the harvest of the Bengali year and the instalments of Government revenue, and at the same time the payments of interests have been equated, the proviso of the section as originally drafted being left out. It is proposed to apply the provisions of this section to *all* under-tenures.

Section 34 has been amended so as to provide for the grant of a mere counterfoil receipt for each payment made on account, while the specification of the yearly rental of the holding or tenure is reserved for an annual statement of account.

Generally, the Committee are inclined to the conclusion that in view of the great importance of the matters treated in this Bill, and of the amount of discussion that is likely to be raised in respect of them, the Government should not attempt to pass it through the Council too rapidly, or until full opportunity has been given for considering the detailed criticism of mofussil officers, and of non-official persons interested in land. The majority of the Committee would indeed prefer to see the measure postponed absolutely until next session, steps being taken meantime to prepare and circulate a complete draft of a revised Rent Law for Bengal, in which the provision of the present Bill, and of the Bill for the settlement of lands on the application of landholders and ryots, might be incorporated, with such further amendments of Act X of 1859 and Bengal Act VIII of 1869 as experience and the decisions of the courts have shown to be really necessary. It is feared that many of the provisions of the Bill will be found eventually so intimately connected with other portions of the existing law, not ostensibly affected by it, that the majority of the Committee would prefer to see the whole subject of a revision of rent law once for all fairly faced.

A. MACKENZIE.*
G. C. PAUL. (1)
A. B. INGLIS. (2)
SYUD AMEER HOSSEIN. (3)
MOHINI MOHUN ROY. (4)
KRISTODAS PAL. (5)
PRAMATHA NATHA ROY, (6)
of Beghapatea.
J. O'KINEALY. (7)

The 22nd February 1879.

Bengal Government letter No. 832—337 LR, of the 3rd April 1879.

To—The Secretary to the Government of India, Department of Revenue, Agriculture, and Commerce.

The nature and scope of the Bill "to provide for the more speedy realisation of arrears of rent, and to amend the law relating to rent" now pending before the Bengal Legislative Council, were fully explained to the Government of India in my letter No. 3660, dated 11th December last. A copy of the Bill in the form in which it was introduced, and of the statement of Objects and Reasons, is now enclosed for readier reference. Since that time the measure has been much discussed, not only by the officers of Government and others to whom it was specially referred, and by the Select Committee of Council appointed to report upon it, but also in the public press—Vernacular and English, and a great mass of valuable suggestions has been brought together, which it has not yet been found possible to arrange and digest.

I am now directed to forward, for the consideration of the Government of India, a copy of the Bill as preliminarily amended by the Select Committee, together with their report on the same, and to invite attention to the remarks made in paragraph 14 of that report. It will be seen that the Committee urge very strongly the propriety of taking up the revision of the Rent Law of Bengal in a much more comprehensive manner than was contemplated at first by this Government. The Lieutenant-Governor, it will be remembered, in view of the loud and constant complaints put forward by the zemindars as to the difficulty under the

* That the Select Committee was thoroughly representative will appear from the following: (1) is the Advocate General; (2) President of the Chamber of Commerce; (3) a Senior Deputy Collector; (4) a leading pleader and landowner, Member of the Rent Commission; (5) Secretary to the British Indian Association and Editor of the *Hindoo Patriot*; (6) Raja and Zemindar; (7) Legal Remembrancer, Member of Rent Commission.

present law of collecting even undisputed rents, was anxious to provide them at an early date with a reasonably summary procedure, to enable them to overcome the passive resistance of their ryots, provided that the ryots' tenure was at the same time so protected and strengthened as to obviate any fear of their being made to suffer unduly in the process. It is found, however, almost impossible to frame a procedure which shall be perfectly fair to both parties and yet afford such special facilities to the zemindar as he seeks to secure. The procedure provided in the amended Bill is now declared by the zemindars to be so carefully guarded as to be practically of little use to them, and they have by their recognized organs expressed themselves ready to postpone their demand for a special procedure if only the whole subject of the rent law can be brought under adequate and detailed revision. It may, indeed, be found that, if the substantive law of landlord and tenant can be put upon a more clear and intelligible basis, if the difficulties that have attended the working of the law of 1859 are duly considered and removed, and if the *ordinary* rent procedure is made more simple and expeditious, the necessity for having any special or summary procedure will not continue to be felt.

3. The Lieutenant-Governor finds that the suggestions of the Select Committee in this respect have the entire support of the Board of Revenue and of all the more experienced Revenue officers in Bengal, as well as of the native community. It is felt certainly that the task is one of considerable magnitude and difficulty, in which it is impossible confidently to anticipate success, but the general opinion is that the attempt should once for all be made.

The Lieutenant-Governor believes that the best mode of dealing with the subject will be to appoint a small official Commission of experienced Revenue and Judicial officers, who should in the first place prepare a careful analysis and digest of the existing rent law as set forth in the Acts relating to that subject, and in the decisions of the courts since the passing of Act X of 1859. All the conflicting decisions of the courts and all the omissions in the Acts themselves would thus be brought clearly into view. The Commission would then consider the suggestions for amendment that have been put forward of late years, and endeavour to prepare a draft Bill embodying such additions to the substantive law, and such improvements in the law of procedure, as may commend themselves to their judgment. The Bill with the report of the Commission would be published and circulated, and subjected to close scrutiny. The opinions of the High Court Judges and of the Divisional and District officers—Judicial and Executive—would be sought for and collated. The public would have every opportunity given it of being heard upon the subject: and eventually a measure based upon the results of this free discussion and deliberation might be introduced into the local Council with the sanction of the Government of India.

I am to solicit the early approval of the Governor-General in Council to these arrangements. It is most desirable that the Commission should begin work at once.

57. The general dissatisfaction felt by the landholders in 1878 with the existing law was very strikingly manifested in the attempt made in March of that year to extend to the settlement of rents in private estates the procedure under which Government settles the revenue in Government estates. The Hon'ble Kristodas Pal, on behalf of the landlords, moved in the Bengal Council for the introduction of a Bill for this object. He said—

His object was to proceed on the lines of the settlement of Government Estates Bill which had been passed by this Hon'ble Council, and which now awaited the assent of His Excellency the Viceroy. The proposed Bill would be simply permissive. It would rest with the zemindars and ryots to avail themselves of the machinery to be provided by this Bill, should they like to do so. In one respect the Bill would take a broader ground than its predecessor; for, under the latter, the Government as the landlord would be alone competent to move the machinery; whereas under the former, both zemindar and ryot would be at liberty to apply for the enforcement of the law. Then, in the case of the Government, the settlement officer would be the servant of Government; whereas in the case contemplated by this Bill, the settlement officer would be a third party, wholly unconnected with the landlord or tenant. The principles on which the settlement was to be made must be governed by the provisions of Bengal Act VIII of 1869. These provisions were, in his humble opinion, vague, uncertain, and, in some respects, unworkable, but he did not propose to interfere with those provisions, as the Government had not yet made up its mind respecting the principles on which enhancement should be made. Keeping, then, within the four corners of Act VIII of 1869 as to the principles on which enhancement and abatement of rent should be made, this Bill would provide for a sort of amicable settlement of rent disputes with the intervention of the Revenue officer. If a zemindar or ryot should feel dissatisfied with his decision, either party would be at liberty to institute a regular suit in a civil court for the reversal of that decision. But his own impression was, and he might state that it was shared by those, both officials and non-officials who were competent to form an opinion on the subject, that the intervention of the Deputy Collector in an amicable spirit might in many cases throw oil over troubled waters, and thus prevent harassing litigation in the civil court, which was ruinous to both the landlord and tenant.

The Bill proposed by the Hon'ble Member was much too one-sided to be accepted as it stood; but the principle that Government Revenue officers must eventually be called in to settle rents found very general favour, and the amended Bill drawn up by the Government, providing for this, was circulated and met with

much support, merging eventually in the general reference of the whole question to the Rent Commission.

58. It only now remains to present some extracts from the annual reports of the last four years to show that, although under the influence of the belief that Government was dealing with the subject, disputes have quieted down, there are still everywhere the embers of an unsettled quarrel—

Burdwan Resolution for 1876-77, paragraph 25

The relations between landlord and tenant are described as amicable, except in the district of Midnapore, where the pressure of the rent question has made itself generally felt.

Dacca Division Annual Report for 1876-77, paragraph 50 (Mr F. B. Peacock).

Another topic which caused much excitement in Furreedpore, and a great deal of painful interest all over the division, was the murder of Poorno Chunder Roy, a zemindar of that district, and the subsequent acquittal by the High Court of those who had been convicted by the Sessions Judge of the murder. In these times, when the feelings between zemindars are far from being as amicable as could be wished, such an occurrence naturally engrossed a large share of public attention. It was thought, and not unreasonably, that the tendency of the High Court's decision would be to make the ryots still more intractable and still more prone to combine against the zemindars than ever; and these results were looked forward to with a gloomy foreboding of trouble in the future. Subsequent events have not in this division, I am happy to say, justified these anticipations. So far as I can learn, any ill-feeling that existed between the two classes has not been in any way intensified by what has happened, nor do I think it is likely now to be so. We may not be able to guard against or prevent such an occurrence as this murder of Poorno Chunder Roy, but we can at least keep a watch over all disputes likely to lead to outbreaks of lawless violence, and take timely measures to prevent them. This is what we have been doing for the last three years, and what we must continue to do until the relations between the rent-receiver and the rent-payer are in a more satisfactory state.

Paragraph 74.

Under this head may, I think, properly be considered the relationship between landlord and tenant. This, for some years past, has been such as to cause district authorities the gravest anxiety. The origin of this was, of course, the not unreasonable desire on the part of the zemindars that they should participate in the increased value of the produce of land, which had been brought about by no special expenditure on the part of the ryots either of labour or capital. In this increased value, therefore, the zemindars had, in my opinion, a perfect right to share. No sooner, however, was the attempt made to enhance rents than the ryots combined, not only absolutely refusing to pay the enhanced rents claimed, but in many cases any rent at all. Then followed rent suits by wholesale in the civil courts, and the subsequent execution, or rather, perhaps, I should say, the non-execution of the decrees obtained; for in many cases things had come to such a pass that no attempt was made to execute them. All this, of course, gave rise to a bitter feeling of animosity between the two contending parties, which at one time had a most threatening appearance. By timely intervention on the part of the authorities, many of these disputes, if not actually settled, at all events ceased to be threatening.

The Agrarian Disputes Act of 1876 also indirectly did good; for though, I suppose, in this division, these disputes between landlord and tenant were more numerous and more deep-seated than anywhere else—parts of the Rajshahye Division alone excepted—it has not been found necessary to extend the Act to any part of it.

Paragraph 75.

During the past year things have in this respect decidedly improved, though they are still a long way from being in a satisfactory condition. In Dacca, there has been no outbreak on either side, but there is no real concord; and as the Collector remarks, "the stillness might at any time be broken."

Paragraph 76

In Mymensingh, rents have been in the majority of cases realized without recourse to legal process, the ryots, after a succession of abundant harvests, being wonderfully prosperous, and hence more disposed to be contented The last two years, two have been signalized by an unprecedented increase in the number of leases, and their counterparts registered. Till recently the exchange of these agreements between landlord and tenant was almost unknown, and the sudden change in this respect is remarkable. To my mind it is a most hopeful sign of peace in the future. It can, I think, only be regarded as an indication of the determination of both parties to settle their differences in the courts, and that as a preliminary to this, they are preparing reliable documentary evidence of the contracts, both as regards quantity of land and the rate of rent paid for it, now existing between them. This and a procedure under which rents may be realized at a smaller cost and with less delay than they are at present will, I hope, go very far towards restoring some semblance of unanimity between the parties.

Paragraph 77.

In Tipperah, in many places, the battle has at great cost to both parties been fought out, and each side is glad of a little breathing time. In Backergunge, there has been no material change. In Furreedpore, hitherto the most quiet district in the division, a zemindar named Poorno Chunder Roy was murdered by his ryots. I do not, however, think that this can fairly be put down as a murder arising out of a dispute as to the rates at which rent should be paid. The causes of the hatred which his ryots have shown was, first, his levying cesses on various domestic

occasions, and second, as they allege, his having instituted suits against them for money they had paid.

Presidency Division Annual Report for 1876-77, paragraph 114.

In Nuddea, it is stated that the people have been generally quiet, and that there have been but few instances of violent disputes either between zemindars, amongst themselves, or between zemindars and ryots. Such disputes as occur among the zemindars themselves have their origin for the most part in conflicting claims regarding shares, or in connection with indigo-planting. The disputes with ryots usually have reference to rents and *abwabs*, and these, it is correctly noticed, will never cease till the pernicious practice is abandoned of paying mere nominal salaries to zemindari servants. The larger zemindars in the Bongong and Kooshteea sub-divisions are for the most part non-residents, but in other parts of the district the zemindars generally live on their estates. Many properties have become much sub-divided, and it is said that their owners are on the highway to ruin, since they cannot forget that they are zemindars, and postpone, so far as they can, the evil day when they and their families must work for their subsistence.

Bhagulpore Resolution for 1876-77, paragraph 19.

In his report for 1875-76, the Commissioner drew attention to the gradual break-up of many of the old zemindari families, owing to accumulated debts and mismanagement, and also to the mischievous effects of the farming system as worked in many parts of this division. In the present report a lamentable account is given by the sub-divisional officer of the state of things in the Banka sub-division, two-thirds of which are leased out in farm to non-resident speculators, while in the remaining one-third, at least half of the landlords are also non-resident. The farms run usually for seven years, and are only renewed on the payment of a heavy and increasing premium which falls entirely on the ryots. The tenants are said to have no rights, to be subjects to the exaction of forced labour, to illegal distraint, and to numerous illegal cesses, while the collections are made by an unscrupulous host of up-country peadahs. Rajah Lílanund Sing's zemindari is said to be one of the worst. The Commissioner hopes the picture may be overdrawn, but the further facts stated, as within Mr. Barlow's own knowledge, go to show that there is only too much truth in it.

Rajshahye Division Annual Report for 1876-77, paragraph 14 (Lord H. Ulick Browne)

In the regulation districts of the division, particularly, the progressive prosperity of the peasantry is evinced by the gradual growth among them of a strong spirit of independence and self-reliance. As a rule, the ryots can and do hold their own against any attempts at oppressive and arbitrary exactions of their landlords. Whenever any infraction of their rights is threatened, they form combinations for defence and offence, so that instances of oppression and extortion by zemindars are now happily of rare occurrence. This is so conspicuously the case in Pubna that Mr. Rees fears there is a danger of the ryots becoming in their turn the oppressors of their landlords, whom they can at present harass inordinately by mere combinations to withhold payment of rents; and he thinks that the early passing of an Act to provide for the speedy realisation of rents is a measure absolutely necessary to restore the balance of power, which has now turned too far against the landed proprietors.

Paragraph 51.

The year under review, as compared with previous years, has been characterized by a general amelioration in the relations subsisting between landlords and their tenants. If the two riots which occurred in Pubna in the early part of the year, and were alluded to in the last annual report, be excepted, the division has enjoyed a singular exemption from serious agrarian outrages and disputes. Instances of arbitrary and oppressive conduct on the part of zemindars by excessive enhancement of rents and exaction of cesses, to which they have no legal right, have been less frequent, owing in a great measure, as I have already pointed out, to the steady growth of a spirit of independence, and the rapid development of a power of combination among the agricultural population of the country. The violent ill-feeling and irritation which formerly prevailed between these two classes have been considerably allayed during the year of report, and grave and complicated differences in some districts, such as Pubna, which appeared at one time scarcely susceptible of a peaceful solution, have in the majority of cases been amicably adjusted.

Paragraph 5.

The material condition of the mass of the population in this division is extremely low.

Paragraph 6

The cultivating classes are generally involved in debt. "Even in time of plenty" (the Commissioner writes), "after paying the rent and the numerous cesses exacted by the landlords, very little is left to them for their support. When such is the condition of the people in ordinary years, the failure of a single crop is sure to cause distress."

Paragraph 8.

As regards the cultivators, the great desideratum is an easy mode of proving occupancy rights, and the general abolition of the *dunabundi* and *thikadari* systems. During the last few years attention has been directed to the prevalence of illegal distraint throughout the districts of North Behar, and active measures have been taken to stop this. In the great wards' estates specially, a sounder system of administration has been introduced, which cannot fail in the end to have an influence upon the management of the private estates around them.

Mr. Worsley, Collector of Mozufferpore, is of opinion that much may be done by the State to improve the condition of the cultivating classes in Behar. He believes that our rent laws do not afford sufficient protection to the ryots. He observes: "The market contrast

between the independent position of ryots in Bengal and the slavish subjection of ryots in Tirhoot, suggests that our code of laws and administrative system, though well-suited to Bengal, have been too advanced and refined for the backward people of these parts." The great desideratum, he says, is an easy mode of proving occupancy rights and a larger number of revenue courts scattered throughout the interior for the trial of rent suits. The suggestions made by Mr. Worsley on this subject are under the consideration of Government.

Mr. Testro, the Officiating Collector of Gya, observes that "the general condition of the people is not likely to improve until the *danabundi* and the *thikadari* systems cease to be the rule in the district. With these systems combined, we have on the one hand a submissive people, accustomed to respect authority, and on the other a petty rent-receiver, who holds on a short lease for which he has paid highly as a commercial speculation, who is bound to recoup himself, and who punctually takes, and is allowed to take, what rent he likes, subject only to two restraints, *viz.*, (1) the public opinion of his own class, (2) the necessity that the ryot shall, be left enough whereon to live."

No zemindars are favourably mentioned by the Collectors. The Maharajah of Hill Tipperah, by constant mismanagement of his zemindari in Chagulnaya, has irritated the people, and a serious affray took place. The Collector of Noakholly reports as follows :—

Chittagong Division Annual Report for 1877-78, paragraph 110 (Mr. J. Beames.

"That portion of the district which constitutes Chagulnaya thana is within the zemindaries of the Tipperah Rajah. A most vicious system of management prevails there, which I think calls for interference on the part of Government. The Rajah gives it in farm to one of his parasites under him; it is re-farmed and sub-farmed over and over again. The sub-farmers frequently bid for a village a much larger sum than it is possible for them to collect, and much higher than the previous year's farm. The result is that the village is frequently taken by some notorious persons, who hopes by violence to collect a profitable sum. This is done under colour of a distraint on the crops before reaping time. A serious riot occurred during the year. The ryots insisted on cutting their crops, and the Rajah's farmers and their underlings fired upon the crowd with four guns, wounding some 12 persons. After considerable delay this case came to trial at the sessions after the close of the year; and ended in a conviction of the farmer's party. The cultivators are addicted to violence to an equal degree with their enemies."

Paragraph 111.

In Cuttack, the ryots of Killahs Domepara, Putia, and Koojung are not on good terms with their present landlords; and in Balasore the ryots of pergunnahs Bhelorachour and Napochour were in open hostility for some time; but from later information it appears that the differences are being adjusted and the ryots are settling.

Orissa Division Annual Report for 1877-78, paragraph 84 (Mr. A. Smith).

In the other parts of the division the relations between landlords and tenants are generally satisfactory.

Closely connected with crime, and with the working of the civil courts, is the relationship between landlord and tenant; but its discussion falls more properly under the heading "condition of the division," &c. On the whole, there has been outward quiet; but in many cases the ryots are not paying rent, and the zemindars are afraid of suing, as they gain nothing by doing so. The quiet state of affairs is, I am inclined to believe, greatly owing to the hopes entertained by the zemindar that an Act to enable him to realize more easily will soon be passed; such an Act will do quite as much good to the ryot as to the landlord.

Dacca Division Annual Report for 1877-78, paragraph 75 (Mr. D. R. Lyall).

If a ryot knows that he must pay, he will do so; but when he knows there is almost no law which will touch him if he does not (and this is more than ever the case since the Procedure Code prevented the sale of bullocks, &c.) he prefers not to pay, even with the chance of litigation in view, and such action is necessarily demoralizing.

"The relations subsisting between landlord and tenant have been fairly cordial throughout most of the division during the year of review; although it can by no means be asserted that the distrust and dislike subsisting between them have completely died out in some districts. It is, however, satisfactory to be able to record that the year has been marked by no serious disputes and no grave outbreaks of violence on either side, which have unfortunately characterized the administration of preceding years. Pubna still unhappily continues to be a sort of hot-bed of slumbering discontent and distrust between landlords and tenants." Mr. Taylor gives the following picture of the state of matters, past and present, in Pubna :—"The happy relation which formerly prevailed between landlords and tenants is no more to be seen. In former days the ryots used to regard the landlords as their natural guardians, and had great reverence for them. It may be said, without exaggeration, that the zemindars were considered by many as objects of worship. They (the zemindars) in their turn treated their tenants as members of their own families, and had a feeling of love for them. In place of this good feeling, there now exists between the two classes a feeling of distrust and animosity. The ryots now consider the landlords as their worst enemies, who only watch for opportunities to fleece them, and the zemindars are always on the alert, like a general in a camp of discontented soldiers. Divers causes appear to have worked such a change. The prosperous condition of the tenantry has roused a feeling of envy among the landlords, whose general condition has become bad. The landlords, therefore, with a view to keep up their former

Rajshahye and Cooch Behar Division Annual Report for 1877-78, paragraph 73.

position, try to extort as much as they po-sibly can. The ryots, through the influence of good Government and civilisation, now understand their rights, and are not so pliable as before. Thus a feeling of some kind of hostility has arisen, which does not augur well for the landlords, who are in reality the losing party by the change. By the late agrarian disputes zemindars have been taught that they cannot longer expect to obtain much from their illegal cesses, and that the ryots are able and determined to fight for their rights. The ryots, too, have learnt how great is their power, and are ready on the slightest pretext to form combinations. Both parties have, however, to some extent suffered in the late struggle, and will not care to resume it very speedily; but of the two, the zemindars have come off second best."

Paragraph 74.

The Magistrate-Collector of Rungpur is not satisfied with the state of affairs in his district in connection with land. The ryots in pergunnah Batasun are said to be rack-rented by its zemindar, Roy Lachmiput Singh, Bahadoor. Again, in Gobindgunge in the south, on the borders of Bogra, the feeling between the zemindars (the principal estate is that of Prosono Kumar Tagore) and their ryots is described as every day becoming more complicated and unsatisfactory, and from other parts of the district complaints have been made of the exaction of unauthorized cesses, and especially of the obnoxious marriage cess. The employment by absentee landowners of oppressive and unprincipled agents is, no doubt, a legitimate cause of complaint by the ryots: but, on the other hand, the ryots themselves in parts of the district, notably in the Bagdogra sub-division, are most refractory, and often decline to pay even their landlord's just demands.

Patna Division Annual Report for 1877-78, paragraph 32 (Mr. F M. Halliday)

Sarun, the most densely populated district in the division, with its population nearly 800 to the square mile, exhibits a picture of what are the effects of over-population. As elsewhere in the division, the great mass of the people are cultivators, whose condition varies with the season; and the Sarun cultivator, as described by Mr. Hodgkinson, is a type of the division. Improvident and careless, all more or less sunk in indebtedness, the failure of any crop is at once severely felt by him. Mr. Worsley, in Mozufferpore, writes that the higher rates for indigo cultivation have afforded some relief to a large body of cultivators, but the causes of the depressed state of the cultivating classes being chronic and deep-seated, no permanent or substantial improvement can be anticipated without the application of strong remedies. I observe last year he suggested for this the remark that the great desideratum is an easy mode of proving occupancy rights and a larger number of revenue courts scattered throughout the interior for the trial of rent suits. These would, no doubt, go far towards improving the protection to the ryots which our present rent laws do not afford for Behar. But the ryots have, as a general rule, no idea of what an occupancy right is, and the result is that they are for the most part tenants-at-will. The chief evil is the *thikadari* system, the extinction of which is the only remedy for the present deplorable state of things. But the remedy lies in the hands of the zemindars, and it will be some time before we can expect them to give up the easy system of selling their ryots to the highest bidder. I am, however, inclined to think that the remarks made by the Lieutenant-Governor on this subject in his speech at the Sonepore Durbar will sooner or later bear some fruit.

Paragraph 33.

Taking the south Gangetic districts, I find the Shahabad Collector reports that in the north east and along the Sone river the people appear pretty well off, they sit at comparatively low rents with strong guzashta right, and have good land to cultivate. A proof of this prosperity is their independence, and Mr. Edgar gives the instance of 10 of the villages belonging to the late Mr. Solano having been purchased in by the ryots at revenue sales for an aggregate price of Rs. 2,19,320. Of course they have had to borrow a large part of the price, and the lenders have gone shares with them in the purchase; still the fact that they have had the courage, energy, and power of combination to carry the transaction through, seems to be a very hopeful sign. But the condition of the people on the west and south is very different, and we find the same position as elsewhere of rights of cultivator being very weak where they do exist, and the poverty of the people being described as painful In Gya, the remarks made last year under this head still remain true. As regards the bulk of the land, the right to collect rents is still put up to the highest bidder at frequently recurring intervals, and is bought as a commercial speculation.

Paragraph 148

In Tirhoot, the relation between landlords and tenants have, however, been not so satisfactory as could be wished. Mr. Worsley writes as follows:—

"The relation between landlords and tenants have been much disturbed in some parts of the district, and specially in parts of the Seetamurhee sub division. The ryots seem to have discovered the value of the road cess papers, and to be freely using them against their zemindars. Some zemindars have complained to me of the facility with which ryots can deposit their rents in court, and of the great expenses to which zemindars are subjected when many of their ryots adopt that course. The law, it is said, provides no means of ascertaining that a ryot has tendered what he truly considers to be the full amount of rent due to his zemindar before depositing it in court, and the written declaration which he presents with his rent to the moonsiff is no security for his honesty The stamp fee charged in such a case may be a mere trifle to the ryot, when compared with the reduction of rent which he is trying to effect, and fear of a prosecution for a perjury never disturbs his mind, as it is impossible for the zemindar to prove a negative. There seems some force in these objections, but as I never hear them made by really good landlords, I presume that the ryots do not without reason avail themselves of the power given them by the law."

In support of the above remarks, Mr. Worsley quotes the following figures showing the number of rent-suits and other important proceedings instituted under the rent law during the past two years in his district:—

Paragraph 149.

	1876-77	1877-78.
Rent Suits	1,127	2,671
Distraint cases	108	206
Number of ryots who have deposited rents in court	1,938	2,924
	Rs.	Rs.
Total amount of rent deposited	11,713	14,633

Mr. Worsley, however, adds that "there are now some signs of improved relations between landlords and ryots, many of the former having begun to recognize the dilemma in which they have been placed by the returns made under the Road Cess Act, and having offered concessions to the ryots, and if the zemindars generally can be made to feel a little respect for the ryots' power of combination and resistance, they will assuredly become more moderate in demands, and less apt to enforce them by oppressive measures. On the whole, I am of opinion that a first blow has been struck by the ryots at the despotic power of the zemindars, and that the effects of the blow will become more manifest in the course of a few months."

Paragraph 150.

Mr. MacDonnell, too, reports unfavourably of the relations between landlords and tenants in his district. He remarks thus—

"In my last year's report I referred to the feeling which had been created among the ryots of this district by the action of the zemindars in reference to the road cess. Certain zemindars, with a view to dispossessing their ryots from their holdings, had excluded such ryots' names from the jummabundees filed under the Act, while showing such holdings as their own *nij puttees*; other zemindars, again, with a view to enhancing ryots' rents by extra legal means, had in their jummabundies shown their rents higher than they really were; while others, again, with a view to lessening their contribution to the road cess, had shown their ryots' rents at lower figures than the ryots actually paid When these zemindars, who had improperly excluded ryots' names from jummabundees, and when these other zemindars who had entered their ryots' rents higher than were really paid, came, the former to take possession of the ryots' holdings, and the latter to exact enhanced rents, they were met with opposition and with what, in some villages, proved to be in the nature of a combination to withstand the illegal demands. Gradually a true appreciation of the provisions of the Road Cess Act became prevalent among the ryots, who, among other things, learnt that while the zemindar could not by false jummabundees make evidence for himself to the ryots' prejudice, the ryots could take advantage of a jummabundee filed by the landlord, showing his rent at less than it really was.

"The landlords, however, being unwilling to recede from the position they had taken up, the ryots adopted the legal means of paying the rent into the court and of applying to the Collector to enforce that penal provision of the Act which refers to the filing of false jummabundees. Although, in a few glaring instances, it seemed advisable to me to vindicate the law in this respect, I do not think it desirable to institute prosecutions indiscriminately, for in such a case it would be difficult to determine what zemindar to exempt, while it seemed unadvisable to intensify the feeling of exasperation which already existed.

"Meanwhile the zemindars strove to checkmate the ryots by the following device. They declared in the civil courts that the ryots, who had deposited their rents therein, had not previously tendered payment to them, that consequently the ryots' declarations appended to their petitions of deposit were false. The Moonsifs accordingly allowed the zemindars to prosecute their ryots for making false declarations. It seemed to me that the course pursued by the zemindars in this matter was one which, under the circumstances of the case, needed careful treatment, and I accordingly took all such cases, of which there were many on my own file. In none, however, did I see grounds for issuing processes, for in every one of them a sufficient tender of the rent had, in my opinion, been made, the question in dispute between the parties being at what rate the tender had been made.

"My refusal, on the one hand, to institute prosecutions against zemindars for filing false jummabundees, and my refusal, on the other hand, to countenance the institution of cases against the ryots of the kind just referred to, has had the good effect of forcing on ryots and zemindars alike an amicable settlement of their disputes. The result is that, at the time of writing, the excitement, which at one time bid fair to be prolonged and troublesome, has entirely disappeared. The facts, however, which have transpired during the year in connection with these road-cess jummabundees satisfy me that the jummabundees now filed in our road cess offices are to a considerable extent inaccurate. The Board have ruled that during the currency of the quinquennial period between the completion of one and the commencement of the next road cess assessment, inaccuracies discovered in jummabundees are not, as a rule, to be corrected."

There has, however, been a considerable improvement in respect of distraint. "The action taken by me in this respect," says Mr. MacDonnell, "has had a beneficial effect; and although, doubtless, the moderation shown by zemindars in this respect during the year is mainly due to the knowledge that illegalities would no longer be tolerated, I am not inclined to deny them any credit their moderation may deserve, even though it may not be an altogether spontaneous manifestation."

Paragraph 151.

Mr. Hodgkinson speaks unfavourably of the Sarun zemindars, who are, he says, exacting landlords; but this, he thinks, is the natural result of the ryots wanting land, instead of the zemindars wanting ryots.

Paragraph 152.

In Chumparun there have been constant, though not serious, disputes during the year between landlords and ryots concerning land. The result was that numerous complaints were lodged by the ryots against zemindars in the criminal courts under section 447 of the Penal Code (criminal trespass), though such disputes were in reality of a civil nature. Complaints of illegal distraints have also been common, clothed in the grab of criminal trespasses. The observations made by Mr. Nugent, the sub-divisional officer of Bettiah, on the subject are noteworthy; he writes as follows:—

"Few, I should imagine, of the zemindars or thikadars have any notion of the requirements of the law, while the ryot appears to consider that, under any circumstances, any interference whatever on the part of the landlord with his crop, standing or cut, is an offence punishable by the criminal law. Having regard to the distance from the civil court, the expense of having recourse to it, and the complication of the rules to be observed, there can be no doubt that the introduction of a simple procedure, while beneficial to the landlord, would probably be beneficial likewise to the ryot, who would then understand his liabilities, while the landlord would not find it necessary to take more than his share as an insurance against possible punishment by the courts."

Paragraph 153.

Mr. Kean makes the following remarks on this subject:—

"That the ryots do not understand their liabilities or their rights under the law is very evident, and they frequently suffer in consequence; the circumstance is due to their general ignorance and want of education. As education spreads, and when the railway has made communications easier, this evil will disappear. In the mean time we can but support the ryots to the extent the law permits. There is one source of oppression, however, which deserve special notice, and that is the practice which prevails largely in some estates, of withholding pattas and receipts for rent. One considerable landowner, and one who derives a large income from his ryots, Roy Durga Prosad Sing, Bahadoor, of Mudhubunnee, is, I am sorry to have to record, one of the principal offenders in this way. Cases have come before me in which it was admitted that neither pattas nor receipts had been given, and I believe the system is very prevalent throughout the estate. The evils of such a practice need no demonstration, and it cannot be too severely condemned."

Mr. Kean continues:—

"Other estates, on the other hand, especially those held in farm by indigo-planters, noteably that of Furkoha and Lalserai, managed by Messrs. J. Hill and J. J. Macleod, not only give receipts to their ryots, but the latter pay their rents themselves into their factory, where counterfoil receipt-books are kept, the half being given to the ryot when he pays his rent, the foil being kept for reference and as a voucher. The advantage of this system is very great, as not only does the ryot get a receipt for his rent, which he cannot be made to pay twice over, but he is insured against the extortion and rapacity of the putwaris, gomashtas, &c., and the factory is the gainer, as their ryots are better off, and consequently more contented. If the entertainment of a suit against a ryot, except on the production of his registered kabuliyat, was barred by law, and some measures could be adopted to ensure the granting of receipts the status of the ryot in this district would be greatly improved."

Presidency Division Annual Report for 1877-78, paragraph 87.

On the whole, both descriptions of notices have decreased in this division. The Collector of Nuddea thinks that figures are no indication of the extent of the actual transactions in the way of enhancement and relinquishment. I agree with him in the main in this opinion, but, quoting the remarks I made on this subject in my land revenue report, "I think in this part of the country, where combinations to withhold rents are uncommon, it is a hopeful sign where the notices diminish in number as indications of a satisfactory feeling between landlords and tenants, which renders unnecessary an appeal to law in order to enforce on one side or the other a right which each party indubitably possesses. It is satisfactory, in a ward, to see that fair enhancement is not objected to, and that the ryots are on the whole contented, as shown by their remaining on their lands."

Paragraph 88.

The Collector of Nuddea reports that the relations between landlords and tenants have undergone but little change during the year under review, but that the necessity of providing the landlord with some cheap and ready means of realizing his rents from ryots becomes more urgent every year. I need only remark here that it is, I believe, universally acknowledged that some more speedy and summary process of getting in their rents must in common fairness be given to the zemindars than they have at present, and that a measure of this kind is already under the consideration of the legislature.

Irep roduce below what I said in my land revenue administration report on the subject of general relations between landlord and tenant. "On the whole the general relations appear to have been undisturbed during the year. There was only one instance of complaint within the year, in which the amlas of Maharajah Sir Jye Mungul Sing, K.C.S.I., of Monghyr seemed to have shown a tendency to be oppressive. Mr. Magrath, as soon as he became aware of the fact, communicated with the Maharajah, and he thinks that the mischief has ceased. With regard to the Sonthal ryots of the Khurrukpore estate belonging to the Durbhunga Raj, Mr. Magrath states that "they continue to give every kind of trouble they can. They will neither pay their rents nor give up lands, which they cannot or do not care to cultivate, and I have had to bring them before the civil court. If they persist still in their old ways, it will be necessary to sue to evict them, as they are mere squatters without any rights, and take every advantage of the leniency displayed to them by Mr. Lockwood."

Bangalore Division Annual Report for 1877-78, parragraph 100.—(Mr. G. N. Barlow)

Since submitting the above report, I have heard that some of the tenants in the Mudhepoora sub-division did not pull well with their landlords, owing to demands of enhanced rent made upon them. There was, however, no disturbance, and the ryots had recourse to the provision in the 'aw allowing them to deposit the rent. There were 5,516 cases of deposit in the sub-division, luring the year, against an average of 1,183 of the five preceding years. The following is extracted from Mr. Newbery's report:—"Good crops and high prices have made landlords rather anxious to share their ryots' prosperity, in the form of an increase of rent, and the result has been a large increase in the number of ryots who have lodged their rents at the old rates in the civil court. This is specially noticeable in the Mudhepoora and Soopool sub-divisions. Rents are very low there, in fact nominal, and the ryots are unanimously opposed to a rise of rent, and combine to resist its enforcement. The ryots there certainly require no protection from the oppressions and extortions of their zemindars. On the other hand, zemindars decidedly want some means of collecting their very moderate and just demands more favourable to them than the ordinary procedure of a civil court."

Paragraph 101.

I believe the condition of the tenantry in the districts of Purneah and Malda is far more satisfactory than in the other districts, for there the competition seems to be rather amongst landlords for tenants than amongst tenants for land—a result readily accounted for by the climatic and physical disadvantages of the district, which operate as checks on agriculture and the growth of the agricultural population. In Monghyr and Bhagulpore the farming system prevails to a large extent, and consequently there is more oppression. I, as promised last year, had further inquiries made regarding the oppression alleged by Mr. Eyre to have been prevailing in some of the farmed estates in Banka, and also inquired whether such system prevailed in Monghyr. Both the district officers have assured me that no more oppression is exercised than is incidental to the thickadari system. In the Sonthal Pergunnahs the Government has taken upon itself to settle definitely the question of rent, and measures are in progress.

Paragraph 102.

The Collector of Pubna reports as follows on the subject:—"The attitude of zemindars and ryots towards each other, though at present it is not one of open opposition, is not, and will probably never be for years to come, friendly. The more powerful zemindars do not at this time use those violent and unlawful means for realizing their rent and enforcing payment of cesses which appear to have been the main cause of the outbreak in 1871." * * *

Bhagulpore Division Annual Report for 1878-79, paragraph 84.—(Lord H. Ulick Browne.)

Model zemindars, who care for the improvement of their estates and for the good of the tenantry, who are thoroughly upright, and who possess a sufficient amount of public spirit, are rarely to be met with, and the case of this division forms no exception to the rule. The zemindars here are generally poor and involved, they are usually under the pernicious influence of their amla. The condition of their estates or ryots is seldom, if ever, thought of.

Bhagulpore Division Annual Report for 1878-79, paragraph 197.

Some of the zemindars are mentioned as inclined to cause disturbances with a view to take forcible possession of lands.

Paragraph 199.

No cases of aggravated land dispute between landlords and tenants have been reported during the year under review. In Furreedpore relations between landlords and tenants are reported to be fairly good, but in the other districts there is some ill-feeling, especially in Backergunge, where the landlords are disposed to be extortionate and the ryots refractory. Non-residence would seem to be the principal cause of this lamentable state of things. The resident talookdars have less difficulty, since they are of the people and understand and are understood by them, but the reputation for turbulence of the Backergunge ryot keeps away the great zemindars.

Dacca Division Annual Report for 1878-79, paragraph 65—(Mr F. H. Pellew.)

The depressed condition of the lower classes of cultivators and labourers in Behar is annually recognized and discussed in the Divisional Administration Report. It cannot at present be expected to vary much from year to year, except so far as it may be affected for the better or worse, by a good or bad harvest, and by a fall or rise in the prices of food. As has been before pointed out, it is quite possible to push conclusions based upon even these

Patna Resolution for 1878-79, paragraph 6.

simple premises too far, in estimating the condition of a province where wages are paid in grain, and where rents frequently consist of a certain proportion of the crop. Still, after making all allowances, there can be no doubt that the sustained rise in prices, common to nearly every district in Behar, must press seriously upon all who are not themselves sellers of surplus produce. The fact appears to be that excessive exportation, stimulated by high prices outside the province, has thoroughly depleted the local stocks, and even the favourable harvests of the past year had no appreciable, or at any rate no lasting, effect on the local markets, much of the crop being drained away for sale in other parts of the country, where the people, though now themselves suffering from short stocks, are still better able than the Beharis to pay for the grain which they require. Behar, as a whole, is too poor to buy up its own good harvests. Mr. Toynbee, the Collector of Patna, who has devoted much time to investigating the condition of the labouring classes and small traders of his district, writes thus of them: "The expression 'living from hand to mouth' has assumed for me a more definite and tangible, if less satisfactory, meaning than it ever had before. I have been into and over the houses of hundreds of *Tellis, Baniyas, Gowallas, Halwais*, and other similar castes, and have seen how they live and what they eat. I could not have believed, had I not seen it for myself, how abject is their poverty. Hunger satisfied, and decency propitiated, they seem to have no further ambition. Many of them do not know what it is to have two meals a day; and most of them do not know, when they rise in the morning, whether they will get one full meal or not. Wages have remained as before, while the prices of all kinds of food have increased. Over-population seems to be an effectual bar to any further material improvement that might otherwise be brought about by increased means of communication, by education, and other similar means."

Of the poorer classes in Sarun, the Sub-divisional officer of Sewan writes—"It is, however, a fact that the average size of the farms of the poorer classes does not exceed five bighas, and that seven persons, according to the census, constitute a household. The average value of the crops produced in one year, taking good land with bad, on a single bigha is Rs. 25, of which Rs. 3 is payable in rent. Therefore, amongst the poorer classes, that is some 600,000 persons, seven persons have to subsist on Rs. 102 a year, or only a rupee and four annas each a month. Yet even this condition represents a state of things much more favourable than half of the poorer classes, or 300,000 persons, can obtain. Tens of thousands of them have not more than two bighas of land, and the number of those who have only two or three is equally great. There are, besides, the landless day-labourers, who number from ten to fifteen per cent. of the inhabitants of every village. How they contrive to subsist in years of scarcity, and particularly during such lengthened periods of dearth as the first five months of the official year under report, is a more difficult question than most people are prepared to answer. The fact is that the possessors of a larger kind of farms, with areas from fifteen to thirty bighas, and even less, know the importance of preserving this class alive, and also of preventing them from emigrating through distress, and give them just enough food to keep body and soul together. Emigration is constantly proposed as the panacea for the domestic difficulties of Sarun; but so long as there is a large class of middle-class farmers, whose caste or pride restrains them from working, and who are prepared to devote all their influence and much of their substance to keep the really poor in the district, even when they have no work for them to do, so long will all schemes for diminishing the population by emigration infallibly fail.

Paragraph 7.

Gloomy as these pictures are, there is no reason to believe that matters were worse last year than usual. On the contrary, it is reported that all those labourers who are paid in kind derived the full benefit of the abundant harvest; and at one time in Durbhunga the demand for labour in the fields was so great, and the remuneration so good, that it was almost impossible to get men to work on the district roads even at considerably enhanced wages. In Gya, again, the great public works now being carried on there did much to help the labourers to meet the high prices of the bazars. That there was no special pressure in the division is indeed manifest from the fact that the number of emigrants to the colonies and tea districts fell from 11,300 in 1877-78 to 5,039 during the year of report, the largely over-populated district of Sarun contributing only 84 of these. There was of course the usual exodus by road from Sarun and Tirhoot of gangs seeking work in the eastern districts of Bengal; but no inducements suffice to take the Behari coolie away from home for more than a few weeks at a time, or to places of which he has no personal knowledge. Thus, attempts to get doolie-bearers for the North-West Frontier and for Burma entirely failed, though the wages offered were liberal in the extreme.

Paragraph 8.

It is evidently futile to hope that emigration will relieve Behar of any appreciable portion of its people until some change takes place within the province itself, which will have the effect of extruding the superfluous population by making it practically impossible for them to continue there. Such a change can probably only be effected by a reform of the land law. If the present dead level of pauperised cultivators were once broken up, and if due protection were given to the ryots, and their tenures made secure and valuable, the standard of comfort among the landholding peasantry would probably rise; the desire to increase the area of their holdings would become effective, as the means to attain this accumulated; and eventually it might be hoped that the soil would be divided among just such a number of cultivators, with their dependent labourers, as it could maintain in the higher style of living that would necessarily follow upon growing

wealth. Thus gradually an effective stimulus to emigration might be applied, serving to rid the country of its surplus population. All this, however, if it ever comes, must be the work of time. The whole subject of the Rent Law is now under the consideration of a Government commission, and is beset with many difficulties. Meanwhile, perhaps, the most marked improvement in the lot of the cultivating population of North Berar arises out of the altered conditions under which indigo manufacture is now being carried out, as will be noticed below in a later part of this resolution.

Patna Division Annual Report for 1878-79, paragraph 63.—(Mr. F. M. Halliday.)

There has been a marked increase under the heads of enhancement and relinquishment. Applications for notices of enhancement amounted to 965, against 468 in the preceding year, while applications for notices of relinquishment have increased from 342 to 651.

Orissa Division Annual Report for 1878-79, paragraph 85.—(Mr. A. Smith.)

Opinions on the subject of the relative position of the different classes vary considerably, according to the peculiar idiosyncrasies of the reporting officers. There can, however, be no question that the condition of the cultivating classes, who form the bulk of the population, has undergone much improvement in recent years. It is less in Orissa than it has been in Bengal, with its network of navigable streams and railways to convey its produce to market, but it is by no means small. Owing to the unhappy calamity of 1865-66, the pressure of the population on the productive soil is comparatively small. The rate is, however, fast increasing, as the prudential checks which operate to restrain over-population in Western countries are wanting here. Social usage requires early marriage, with little regard to the means of the parties. The increase of population is, no doubt, in part responsible for the large rise in the price of food staples, and in time the increasing price of the necessaries, and a growing taste for the luxuries of life, may lead to a more prudent social system. The alteration of a usage so deeply engraved in the national feelings as early marriage in India is not to be effected rapidly, and may take a long time to accomplish.

Presidency Division Annual Report for 1878-79, paragraph 34.—(Mr. F. B. Peacock.)

Among the district officers of this Division there is a concensus of opinion that the condition of the agricultural classes, who form the majority of the people, has much improved within the present generation, owing to the increased value of the products of the land and other favourable circumstances; that the traders or *mahajuns* have also shared in the material progress, which is a sign of the times; and that the labouring classes are also far better off than their ancestors. People of the middle class, commonly called the *bhodrolok*, have, however, not shared in the generally increased prosperity, for reasons which are now well known, and need not therefore be recapitulated. There are, however, as I pointed out in my last report, signs that conservatism is being gradually undermined, and that a few years may show that they are betaking themselves to employments now considered derogatory, as being opposed to their time-honoured customs and caste prejudices.

There is another class, of whom it is apprehended that they are not so well off as is sometimes supposed—I mean the zemindars. Inordinate expenditure on marriages and continual sub-division of property have reduced many formerly flourishing families of the class to a position but little above that of a mere tenure-holder. Improvidence, want of thrift, and a most fatal proneness to leave the whole management of their properties in the hands of others, have been for generations slowly, but surely, doing their work. The consequences, too, are now much more severely felt than formerly, owing to the growing independence of the ryots, their yearly increasing knowledge of their rights, and their consistent resistance of all extortionate demands, no matter of what kind. There is, however, a hopeful side of this picture. The zemindars of the present generation are far better educated than their fathers, and in many instances take far more personal interest in the management of their estates, and are not content now to leave everything in the hands of a Dewan or Naib. Greater facilities will probably be given to them of securing punctual payment of their rents, and for the settlement of disputed questions as to the rates of rent; and there is still considerable profit to be made out of the land if zemindars will only act fairly and consistently with their ryots.

Orissa Division Annual Report for 1879-80, paragraph 109.—(Mr. A. Smith.)

The main features of the year's administration are an increase of rent-suits and a decrease of suits in connection with distraint proceedings. A marked increase is also observable in Cuttack in the number of notices connected with the deposit and enhancement of rent. The increase is attributed to ill-feeling existing between the zemindars and ryots of Puttea, Dompara, Utikan, Billa, Aull, and Narijung. Though the relations between the parties are unsatisfactory, there has been no sign of the disputants breaking out into violence. The district officer of Cuttack attributes the decrease in the distraint proceedings to the instructions which were issued last year, with my approval, to the canoongoes, defining their power and position in the matter of distraint; while the district officer of Balasore sees in the decrease signs of healthier relations between the landlords and tenants of pergunnahs Bhograi and Kakrachour, who were not on good terms in 1878-79, but who were reconciled during the year. Mr. Armstrong reports that the cause of the falling off in Pooree is to be found in the recent floods, which affected the circumstances of some of the peasantry and obliged the zemindars to be forbearing.

Mr. Newbery, Magistrate of Bhagulpore, writes—

Bhagulpore Division Annual Report for 1879-80, paragraph 129.—(Mr. G. N Barlow, C S.I)

"As, in the famine year the zemindars shared their ryots' adversity by remitting rent to a large extent, they naturally now consider that they should be recouped. Enhancement of rent has been the order of the day. Some of the zemindars, with what the natives call *rawab*, have been able to enhance without notices and suits; others have been plunged into litigation. But neither party has attempted any criminal means of either enforcing or resisting the demand for higher rents. There is one class springing up which I think is deserving of notice. The class I allude to are the 'Belati grehusts,' or English cultivators, who are clearing the sál forests. They are mostly broken-down indigo-planters, or the surplus progeny of the small planters and putnidars who abound in the north of this district. They get grants from the zemindars of holdings up to 200 bighas at jungletari jummas, and cultivate ordinary crops like native cultivators.

"These settlers stand hard, out-of-door work remarkably well, and the climate seems to suit them. The locality concerned is in the Soopool sub-division, where there are some not very extensive tracts of jungle."

It is gratifying to observe that there has been a marked diminution under both the classes of notices. The only districts where the enhancement notices show an increase are Shahabad and Chumparun.

Patna Division Annual Report for 1879-80, page 31 —(J W. Edgar, Esq., C S I)

As observed by my prodecessor, the figures under this head do not indicate the real feeling which exists between zemindars and tenants. The figures for Sarun would seem to demonstrate a healthy state of feeling between landlord and tenant, but the case is different, as will be seen from the following observations made by Mr. MacDonnell :—"If one were to judge from the number of notices of enhancement and relinquishment served through the Collector, he would take a roseate view of the relations of landlord and tenant in Sarun. Only 18 notices of enhancement and five of relinquishment passed through the Collector's hands. It is needless to say, however, that these figures are no criterion of the state of feeling, and it is a fact that considerable excitement existed, specially in the Koore pergunnah, belonging to the Hutwa Raj, during a portion of the year. This excitement was due to endeavours on the part of thikadars to make enhancements forcibly. The excitement has now subsided, and I think that part of the district is none the worse for the attention which was paid to it. In Behar, rent enhancements are rarely effected through the medium of the civil courts. Where efforts are not made to enhance the jumma in the way alluded to above, a temporary cess is levied for special occasion, and this is not so much objected to by the people. It is only in Government and wards' estates managed by Government officers that these cesses are not levied. During the year under review nothing new has come under my notice in regard to this matter."

Page 32.

I wrote as follows regarding Shahabad :—

"The relations between landlords and tenants, particularly in the north of the district, are somewhat uneasy at present. The amount and value of the produce of the land has increased very rapidly of recent years, and the natural struggle has ensued, the landlord striving to get as much, and the tenant to give as little as possible of the increased profit."

Mr. Barton, the Collector of Gya, writes :—

Page 33.

"During the whole year there have been issued only one notice of enhancement of rent and three of relinquishment of holdings. This, on the face of it, would show a most cordial relation between landlord and tenant. Of course it is very true that the ryots and the zemindars do not quarrel among themselves. This is owing to helplessness, dependency, and resigned contentment or despair on the part of the ryots, rather than to any merit on the part of the zemindar. The *bhaoli* system has, no doubt, a great deal to do with this state of things, but it has also many advantages on its side. The physical features of this district are such that there can be no harvest to speak of without extensive irrigation by means of pynes and ahars, which cannot be undertaken by the penniless ryots. The *bhaoli* system unites the ryots and the zemindars in one interest, and is beneficial in this sense."

Mr. Grierson, the sub-divisional officer of Mudhoobunnee, writes :—

"It may be said that the people show a steady increase in prosperity. Every year that I stay here I find the peole more and more independent and less liable to bear quietly oppression at the hands of the landlord class. Unhappily, excepting the Durbhunga Raj, there is not much to be said in the favour of these latter. The smaller zemindars are nearly all Brahmins, and are embued with all the worst traditions of their caste. Too indolent to take any active interest in their own affairs, and too unscrupulous to heed the means taken by their subordinates for collecting their rents, there is little that is good to be said of the majority of them. They can only be kept in order by the fear of the law, and even that is less effectual with them than with others. Petty zemindars are able on occasions to exercise acts of oppression. I am convinced, however, that these acts are getting fewer every day, as the ryots know their rights better and better, and as the education many of them have received under the comparatively legal system of management of the Court of Wards more and more spreads amongst the masses. It is now thoroughly understood that the system preventing the cutting of crops is forbidden, and that a zemindar who

adheres to it is liable to punishment. I do not mean that the custom has entirely died out, but I believe that it has been robbed of its most objectionable features."

In Mymensingh the prospects of a new rent law have been a good deal discussed. The majority of the public, being tenants, are in hopes that a new law will still further curb the power of the zemindars to enhance their rents. A simple and easily intelligible law is wanted.

Dacca Division Annual Report for 1879-80, paragraph 76.—(Mr. F. H. Pellew.)

The relations between the landlords and tenants are, on the whole, not unsatisfactory. But everywhere there is a tendency on the part of the zemindar to enhance the rents, and on the part of the tenants to oppose it; but nowhere did any aggravated case of disturbance occur during the year. In Dacca things are said to be satisfactory, but in Furreedpore the Collector reports that the tenants are in the habit of playing fast-and-loose with different landlords. The Deputy Magistrate of Madareepore states that the relations between the landlords and tenants in his sub-division, especially where the latter are Ferazies, are unsatisfactory. The zemindars are grasping, and avoid giving written leases or receipts, and try to turn out old tenants when a new man offers higher terms.

Paragraph 113.

In Backergunge tha Bamna Chowdries and the Shingkhali zemindars are said to be very unscrupulous and quarrelsome, always on bad terms with their ryots, and ever ready to commit oppression and disturbance whenever they can see a chance of doing so with impunity. On the other hand, Nawab Ahsanullah, Baboo Kali Kisto Tagore, the Rajah of Bhookoilas, and the executors of the late Rajah Degumber Mitter, are reported to treat their ryots well.

Paragraph 114.

There were no special cases of open breach between the landlords and tenants in Mymensingh, and the Collector considers the relations subsisting between them as partly satisfactory. It is reported, however, that, at the close of the year, in pergunnah Hossenpore, there were signs of a coming struggle between the landlord Baboo Mohim Chunder Roy of Attarabari, and his tenants. The latter declined to give him kabuliats at all, and are forming unions to resist his demands. I have asked the Collector to watch the movement, and see that no breach of the peace may occur. It is reported that the demands of the zemindar, Baboo Mohim Chunder Roy, are neither illegal nor extravagant, and do not justify the tenants in forming a combination against him.

Paragraph 115.

In Tipperah these relations are reported to be unsatisfactory. The landlords are everywhere endeavouring to enhance rents, and everywhere the ryots stubbornly oppose them. There is much ill-feeling on both sides, and in many estates serious breaches of the peace are only prevented by binding down the parties in large amounts to keep the peace.

Paragraph 116.

In consequence of the general increase in the cost of litigation and the protection afforded to cultivating ryots by the new Civil Procedure Code, landlords are not disposed to bring suits for small arrears against poor ryots, even at the risk of their claims for such arrears being barred by limitation.

Presidency Division Annual Report for 1879-80, paragraph 107—(Mr. J. Monro.)

In Midnapore serious disputes broke out between some zemindars and their ryots in the Contai sub-division in consequence of enhancements and attempts to levy illegal cesses. In some cases the zemindars had been attempting to enforce the payment of rents in kind, instead of in cash as hitherto,—an attempt which the ryots were certainly warranted in resisting by all legal means. It was found essential to bind down the principal zemindar to keep the peace. In Beerbhoom there was some trouble on the estates of Mohunt Gopal Dass and Baboo Durga Prasanna Ghose, attempts being made by the servants of the former to harass the ryots through the criminal courts. One or two other zemindars are unfavourably noticed in this district. In Hooghly the Lieutenant-Governor is sorry to find that the only zemindar named, a gentleman who is always prominent on all public occasions and has done much for the cause of education and charity, is said to be "very much disliked by his ryots, whose rents he enhances to the utmost of his power." In Howrah the ryots are described as able to hold their own, but the zemindars on their side are reported to be generally reasonable in their demands. Generally throughout this division the Commissioner considers that "both zemindars and ryots are in a constant state of preparedness to assert their rights, and, except in the case of a specially astute or unscrupulous and wealthy zemindar, the ryots have the best of it."

Burdwan Resolution for 1879-80, paragraph 24.

59. In 1879 the Government received from the High Court a valuable letter by the late Mr. Geddes, Judge of Tipperah, on the question of rent-suits and rent enhancement in Eastern Bengal. The following extracts may be quoted as supplementing from the point of view of a judicial officer of experience, the facts already brought forward from the reports of the executive officers in charge of districts and divisions:—

That the Tipperah zemindars should, with the exceptional residuum of such few ryots as do stand out, have succeeded in getting decrees for enhancement so often as figures show, is proof demonstrative that the zemindar's resource of a repeated series of passing

Mr. Geddes' letter, No. 70, dated Calcutta, the 16th January 1879, paragraph 28

suits for enhancement needs to be curbed. In that view, it is matter for satisfaction that the substantive law as to enhancement is to be recast.

Paragraph 29.

As a rule, enhancement suits are almost avowedly mere engines for harassing by expensive processes. I have in a long experience of rent-suits met few instances of a zemindar or ijaradar following out any one ground of enhancement in anything like a consistent, rational manner. The usual device is to allege all the possible grounds, increase in area, increase in fertility, increase in crop value, increase in rates payable by neighbour ryots of the same class, to hop from one ground to the other, to fence over all of them, and to prove none. The zemindars complain to the executive authorities that the standard of rate payable by neighbours is nugatory. So it often is. As a rule, rent rates, even in this fertile district have already been screwed up too high, thanks to the high-handed practices which prevail among ijaradars. The consequence is that any attempt to assimilate the ratios between existing and claimed rates on the one hand, and between old competition rates and new competition rates on the other, necessarily breaks down in numerous cases when the subject is brought at last to an arithmetical test on the principles prescribed by law.

Paragraph 30.

That already rents are generally too high is demonstrated by the zemindars themselves when they condescend to comply with the law as to the reckoning of enhancement. Their great difficulty in facing the natural and primary test—that as to increase in values—is how to reconcile the claim in whole or in part for enhancement with any plausible estimate which they can render of the ryot's profit and loss account. The law has prescribed that in any account of gross and net receipts and disbursements there is to be an allowance for wages to the ryot for his labour, and a further allowance for the wear and tear of the ryot's stock. The law says that any increase to the zemindar is to come out of the surplus which remains after labour and stock have been allowed for; in other words, that the zemindar's rent is not to be taken out of the ryot's wage earnings or out of the ryot's working capital. As things are, there is a good deal of difficulty experienced in reconciling these requirements of law with any sort of plausible estimate of gross produce and value thereof per beegha and per holding. True, on a comparison of periods, values are found to have increased in respect of the receipts side of the account. But, unfortunately for the zemindar, the law has been reasonable enough to insist that the other or disbursement side shall also be looked to There also the values are found to have increased considerably. (By the way, such calculations are said to be difficult. All the more reason, then, for continuing to entrust them to well-trained officers.)

Paragraph 31.

The difficulty as to the arithmetical test as to increase in values explains much of the irritation which has obtained in Eastern Bengal. Zemindars, and ijaradars substitutes for zemindars, on finding themselves checkmated by the prescribed test of law as to increase in values, have resorted largely to the other test—that of the increase in rent rates paid by similar ryots for similar lands. Then in too many cases the result was intriguing and manœuvring. The standard device was to bribe this or that member of the ryot class to tell a lie that he was paying at such and such rate, when in reality by a secret treaty he was to pay only at such or such a rate much lower It was this extremely reprehensible intriguing which called forth combinations to withhold all rents as the only means available to resist improper enhancement of rents. There never yet was any sustained combination to withhold rents, which was not a perfectly legitimate reply to a challenge thrown down by the rent claimant himself. No pressure less than an extreme sense of this external danger would suffice to repress the internal tendency to village wrangling, the proverbial *doladoli*. It is to be hoped that the executive authorities, instead of criticising the civil courts, will allow things to take their natural course. A few dozen good, sound healthy sales for arrears of Government revenue would do more than reams of reports and sheaves of bills to ensure the much-needed agrarian reforms It is not necessary, and it would not be desirable, here to enter into any discussion as to whether either side, and, if so, which is the more responsible of the two in respect of agrarian outrages. All that has to be noticed here is that agrarian outrage or reprisal is the sequel, not the antecedent, to the process which has just been described. That process first of all begins in demands for enhancement, and not till thereafter is followed up by combinations among the ryots for the withholding of rents. Unfortunately there has been a tendency—a mistaken one I submit—on the part of executive authorities to deal with these difficulties by resort to the quartering of punitive police, instead of allowing things to take their natural course of the quarter day sales for default. It seems easier to cure symptoms than to cure disease. In making these remarks, I do not mean to blame the Collector-Magistrates. They are naturally impressed by the complaints which they hear from their zemindars. When they come to criticise the civil courts they naturally expect to hear what the other department thinks it has to say.

Paragraph 32.

There is, of course, no intrinsic objection in principle to the enhancement suits being entrusted to special executive officers upon the condition indicated (I cannot say accepted) by a leading member of the British Indian Association in his recent Bill. If the zemindars will undertake to repay Government all costs of the necessary executive proceeding, that is to say, of field measurement, of enquiry, of adjudication and of supervision, by all means let them have the special tribunals as they are dissatisfied with the ordinary ones. Let them even escape the contribution to Imperial revenue in the shape of court-fees. But the other costs just adverted to would have to bear interest, and be a first charge upon

the zemindari rents, whether enhanced, or not enhanced, a charge ranking second after the Government land tax. A moment's consideration will show that this means the extinction of the permanent settlement for that zemindari, and the holding of it *khas* indefinitely and with no *malikana*. Here is a *reductio ad absurdum*.

Paragraph 33.

Evidently the influential zemindars about Dacca do not recognize this. They think that reverting to the executive courts would strengthen their hands; it would be a new chance. They cannot lose, and they may gain by the change, especially if they are to have the choice whether in any given instance they may resort to the executive procedure in an overt enhancement suit, or to the judicial procedure in a covert one.

* * * * *

The assumption on which the claim as to more drastic measures for enhancement ultimately rests, is some vague idea or other about an "*unearned increment.*" I should like to see that theory about unearned increment in Bengal explained in intelligible language. Is the profit by the substitution of valuable jute for coarse rice to be treated as unearned? Is the bulk or even a large share of the profit of that change to pass necessarily into the pockets of the zemindar? Is the individual ryot to yield every portion of the increased profit which he individually cannot prove that he personally has earned? If that is to be so, the ryots will be unwise if they go on introducing new and valuable staples to replace the old ones—that is to say, go on furnishing the means for raising rents on themselves or their neighbours.

In laying Mr. Geddes' letter before Government, the Judges of the High Court made the following remarks, which are particularly valuable as showing the conclusions arrived at by the Members of the highest Tribunal in Bengal as to the party generally most to blame in cases of rent disputes, and as to the causes which ordinarily give rise to such distputes.

High Court's letter No. 1707, dated 4th March 1879, paragraph 13.

The Judges desire to reiterate once more what they have repeatedly asserted before, that organized resistance to the payment of rent by ryots is invariably due to systematic efforts to enhance them with or without cause; that bad relations between zemindar and ryot are almost universally due either to the property changing hands and to the speculator's attempt to augment the yield of his purchase, or to the zemindar allowing some one, a middleman, to come between him and the ryots; the middleman talookdar, or whatever he be called, being left very commonly to raise the profit which he pays by putting pressure on the ryots.

Paragraph 14.

The Judges desire to express the astonishment that they feel at the observations frequently made on the subject of riots arising out of rent disputes. Zemindars and perhaps officials are apt to think that the ryots are to blame. Now it seems to the court that from the nature of the case the blame must generally rest with the zemindar. Of course the Judges do not mean to say that he is not more or less frequently subjected to great annoyance, and perhaps to loss; but so long as he confines himself to legal measures for enforcing his right there cannot ordinarily be a riot. If rent is refused, he can sue; if he is resisted in distraining; he can apply to a court for assistance; if he is entitled to measure lands and is opposed, he can do the same. There is a legal remedy in each case, and if there is a riot, it can hardly be that it does not result from his impatience, pride, and preference for illegal courses. An obstinate ryot can be coerced, but he can legally only be coerced by the aid of the court: if no coercion is attempted, there is no occasion for a riot. There may be exceptional cases in which the tenants take the initiative and resort to violence to drive out or intimidate the agents of a zemindar acting strictly within the letter of the law; but if there are such, the Judges believe them to be quite exceptional, and their experience founded on the criminal cases that come before the court bear them out in saying that it is very rarely that violence of this class is wholly unprovoked.

Paragraph 20.

An enhancement suit, regular or irregular, is a proceeding of vital importance to a tenant; if he has a right to hold free of enhancement, and fails to prove it, he is simply ruined; whereas if a landlord fails to establish claim to enhancement, even if really a just one, he is no worse off than he was before as regards his actual income. If, therefore, there is a bias towards the ryot, which the Judges do not admit, it is by no means an unnatural one; it is but the natural feeling which leads to the protection of the weaker against the stronger, so far as to require the latter to make out a clear case, which indeed every plaintiff is bound to do. There is, as the old maxim has it, a certain advantage in the position of a defendant which those who suffer under the corresponding disadvantage unfairly, but not unnaturally, stigmatize as the result of bias.

60. The foregoing paragraphs go to prove the following propositions:—

(1) That from the year 1863 downwards, the necessity of undertaking some time or other a radical revision of Act X of 1859 has been recognized by the Government, the Courts, and the public;

(2) That after the outbreak of the Pubna riots in 1873 this necessity was recognized on all hands as *urgent*, and that, too, in the interests as well of the landlords as of the tenants;

(3) That from the year 1875 the local Government has, with the concurrence, approval, and aid of all parties, been endeavouring to arrive at some conclusion as to the shape which such a revision of the law should take;

(4) That until it was found that the report of the Rent Commission failed to settle the disputed points entirely in favour of the landlords, none were more eager to have an amended Rent Law than the landlords themselves.

1st June 1881.

APPENDIX II.

A.—Extract from Phillips' Lectures on the Land Tenures of Lower Bengal, chapter VIII, page 311.

Object and effect of the Permanent Settlement.

Such of the effects of the Permanent Settlement as come within the scope of our present subject will be referred to when I come to treat of the separate heads under which I propose to bring down the account of the law to the present time; but a few remarks as to the object of the settlement and its effect upon proprietary rights may be conveniently introduced here. In the first place we may remark that the introduction of a more formal system of law left little room for the further development of customary rights. Substantially, the period during which rights depended mainly upon custom was closed, and the rights of the parties were thenceforth fixed by positive law. And the Permanent Settlement, while giving the zemindar a perpetual right, was to a certain extent adverse to the existence of such rights in any other person. We have seen that the provisions as to mokurreree and istemrari tenures tended in this direction.

Rights of the zemindars.

As to the rights of the zemindars after the Permanent Settlement, I have already ventured to suggest that it was not intended to alter their position, except by the recognition of the zemindars as entitled to be settled with, and by the relinquishment by the State of its right to alter the assessment. But an opinion long prevailed that the Government had given the zemindar the property in the soil, and had rendered the ryot absolutely dependent upon him, except in so far as the ryot was protected by express legislation. On the other hand, some considered that the Permanent Settlement was not intended to convey such property in the soil or to interfere with subordinate rights; and in the Great Rent Case, which was decided in 1865, the majority of the Judges appear to have held the view that the right of the zemindar was not an absolute right to the soil as against the subordinate holders, but that in that direction the rights of the zemindar were limited by the rights of those subordinate holders. Mr. Justice Trevor says that the object of the Permanent Settlement was "to fix the Government demand, to fix the demand which the zemindar should make on his tenants, and to guarantee to the zemindar the profits arising from his bringing waste lands into cultivation and inducing the ryots to cultivate the more valuable articles of produce," and further on he remarks "that though recognised as actual proprietors of the soil, that is, owners of their estates, still zemindars and others entitled to a settlement were not recognised as being possessed of an absolute estate in their several zemindaries; that there are other parties below them with rights and interests in the land requiring protection, just in the same way as the Government above them was declared to have a right and interest in it which it took care to protect by law; that the zemindar enjoys his estate subject to, and limited by, those rights and interests; and that the notion of an absolute estate in land is as alien from the regulation law as it is from the old Hindoo and Mahomedan law of the country."

Mr. Justice Macpherson also remarks:—"As regards the legislation from 1793 down to Act X, it in my opinion shows clearly that the zemindar never was, and never was intended to be, the absolute proprietor of the soil. He never was proprietor in the English sense of the term, or in the sense that he could do with it as he pleased; for certain classes of ryots have at all times had rights quite inconsistent with absolute ownership, having rights which entitled them to remain in occupation so long as they paid their rents." And again: "It appears to me, then, from these various enactments, and independently altogether of any history save such as they themselves relate, that zemindars never at any time were the absolute proprietors of their estates, but that they at all times have held subject to the rights of various classes of ryots, whom the zemindar had no power to eject so long as the proper rents were paid by them. The rent payable by some of these ryots was fixed and unalterable. The rent payable by others was subject to increase under certain conditions. Rents prior to the settlement were fixed according to the produce of the land—so much of each bigha going to the Government as landlord, and so much to the ryot. The same principle prevailed after the settlement, save that the position of the zemindar as landholder between the Government and the actual cultivator was distinctly recognized, and he was declared to be the proprietor of the land in a certain restricted sense." Mr. Justice Seton Karr remarks:—"Neither by Hindoo, by Mahomedan, or by regulation law was any absolute right of property in land vested in the zemindar to the exclusion of all other rights; nor was any absolute estate, as we understand the same in England, created in favour of that class of persons. The ryot has by custom as well as by law what we may term a beneficial interest in the soil." And again: "The decennial settlement, while enhancing the status and fixing the rights of the zemindars, did not intend to alter, and did not alter, the common law of the country with regard to ryoty tenures. Khudkhast ryots, whose tenures commenced at, or subsequently to, the Decennial Settlement, were still entitled to hold such tenures either at the pergunnah rates, or, what is the same thing, at rates payable for lands of a similar description in the neighbourhood." Mr. Justice Campbell treats it as "clearly established that by the terms of the Permanent Settlement the zemindars were not made absolute and sole owners of the soil, but that there were only transferred to them all the rights of Government, *viz.*, the right to a certain proportion of the produce of every bigha held by the ryots, together with the right to profit by future increase of cultivation and the cultivation of more valuable articles of produce, it being further established that the khudkasht or resident ryots retained a right of

occupancy in the soil, subject only to the right of the zemindars to the certain proportion of the produce represented by the pergunnah or district rates." Mr. Justice Norman remarks: "These provisions appear to me to show that, although the zemindars were by the regulations constituted owners of the land, such ownership was not absolute. The regulations which created a right of property in the zemindars do not recognise any absolute right in them to fix the rents of the land at their own discretion." Sir Barnes Peacock did not agree with the actual decision in this case, and seems to consider a greater right to belong to the zemindar. And a recent writer, already referred to, appears to consider that the zemindars have acquired larger rights than I have attributed to them. He says: "A very important change was brought about by the legislation of 1793. The legislature then for the first time declared that the property in the soil was vested in the zemindars, and that they might alien or burden that property at their pleasure without the previously obtained sanction of Government; and the moment this declaration was made, obviously all subordinate tenures and holdings, of whatever sort, became also personal proprietary rights in the land of greater or lesser degree, possessing each within itself also in greater or lesser degree powers of multiplication. When the zemindar's right had become in a certain sense an absolute right to the soil—not exclusive, because the legislature at the same time recognised rights on the side of the ryot—with complete powers of alienation, the rights of all subordinate holders were necessarily derivative therefrom; and the ascertainment, definition, and enforcement of them immediately fell within the province of the public courts of justice. Sir H. Maine writes: 'If I had to state what for the moment is the greatest change which has come over the people of India, and the change which has added most seriously to the difficulty of governing them, I should say it was the growth on all sides of the sense of individual legal rights—of a right not vested in the total group, but in a particular member of it aggrieved, who has become conscious that he may call in the arm of the State to force his neighbours to obey the ascertained rule.' This change was deliberately and designedly made by the legislature as regards the zemindar; but no one at the time perceived, and few persons since have recognised, that it also involved a like change with regard to every one, from zemindar to ryot, who had practically in any degree a beneficial interest in the land system."

And the cases now seem to have decided that a settlement with a person under the Bengal system does not establish in the person settled with a right to the land if he did not already possess it; but that a settlement is an arrangement made by that person with the Government with respect to the revenue only. This indeed appears from the Regulations themselves, which, while directing, in the Regulations for the Decennial Settlement, that the settlement should be with the "actual proprietors," recognise that the actual possessor, and the person therefore actually settled with, may not be the proprietor, and that, consequently, the fact of settlement with a person under the Regulations does not conclude the question of proprietorship as between that person and the true proprietor. Thus both as regards the rights of the ryots and as regards the claims of other persons to be settled with the rights of the actual possessor are subject to question, and are not concluded or rendered absolute by the fact of settlement. Now the Regulations for the Decennial Settlement prescribe that the settlement is to be made "with the actual proprietors of the soil, of whatever denomination—whether zemindars, talookdars, or chowdries; and probably this enumeration may be considered as recognising that zemindars, talookdars and chowdries are "actual proprietors of the soil" and the preamble of Regulation II of 1793 recites that "the property in the soil has been declared to be vested in the landholders, which was never before formally declared." This declaration is stated to have been made as a part of the provisions for permanency of holding, the revenue being also fixed with the same view. But these expressions do not define the extent of the rights of the landholders or zemindars; and, as we have already come to the conclusion that, in a certain sense, and for the purposes of settlement, which was the matter then in hand, they had acquired certain restricted proprietary rights in the revenue, which might fairly be considered rights in the produce of the soil and in the soil itself, it seems unnecessary to infer that any greater right was intended to be given them by a mere enumeration and description of the classes to be settled with, and by the recital of such settlement. Moreover, we have seen that, for the reasons dwelt upon in the Great Rent Case, the proprietary right contemplated was not, what possibly the words used might by themselves be thought *primâ facie* to imply,—an absolute exclusive right in fee simple; for the ryots are recognized as having proprietary rights as well—that is to say, rights which they did not derive from the zemindars. It is remarked by Sir Henry Maine that the distinction between proprietary rights and rights which are not proprietary is that the latter have their origin in a contract of some kind with the holder of the former. We have seen that Lord Cornwallis was under the impression that the rights of the ryots might be treated as derived in this way; but the regulations themselves save the rights of the ryots as they actually existed; and it is now the opinion of most authorities on the subject that the actual rights of the ryots were proprietary rights. They were not derived from, or carved out of, an original theoretically complete proprietary right in the zemindar, in the way that all interests in land in England are theoretically derived from, or carved out of, the fee simple. As, therefore, the term "actual proprietors" does not mean what might be supposed *primâ facie*, but something less, and considering the way in which it is used, in a mere enumeration of the persons to be settled with, and unaccompanied by any declaration in the regulations or proceedings relative to the decennial settlement of an intention to confer any proprietary right upon the zemindars which they did not otherwise possess, save the exemption from alterations in the assessment, it seems

to me, with the utmost submission to the authorities which have been referred to, that there is no necessity for enlarging the meaning of the term beyond the actual proprietary right which did exist, especially when, as we have seen, the terms used do not mean that every person actually settled with is an actual proprietor in any sense except that of being actual possessor. It is further to be observed that in the proclamation of the Permanent Settlement, at the time when the rights of the "actual proprietors" were put as high as they could be put, the language used is somewhat different. The enumeration omits chowdries, and inverts the order of the sentence, which runs—"all zemindars, independent talookdars, and other actual proprietors;" thus abstaining from any definition of the rights of the zemindars, &c., and reducing, according to the ordinary rules of construction, the other "actual proprietors" to persons in a similar position to that of the zemindars, whatever that was.

The zemindars not made absolute proprietors.

The result seems to me to be that, even if the zemindars were thought to be absolute proprietors, they are not declared to be so, but the contrary; and that the term "actual proprietors of the soil" does not mean absolute proprietors of the soil as against the ryots; and that, consequently, as the Government do not declare any intention of giving up to the zemindars anything but the right to alter the assessment, there is nothing to show that the terms used are meant to render the zemindars absolute proprietors as regards the Government, except in the matter of permanency of revenue. They were to take the Government share of the produce as their own, yielding a fixed assessment to the Government in exchange; but, as I venture to submit, no other alteration was made in their position by the Permanent Settlement. Of course a great practical change was made; because the rights of the zemindars were recognized and secured, while those of the ryots were left to take care of themselves. Moreover, the zemindar, having acquired the Government right in the revenue in perpetuity, was in an advantageous position for absorbing all other rights."

B.—Extract from Report of Indian Famine Commission (1880), Part II, Page 113.

Relations of landlord and tenant.

We next have to consider the relations that exist between the landowners and the tenants who hold under them, the character and extent of the rights possessed by these subordinate holders, and the causes which have in some instances conduced to the diminution or obliteration of those rights. The relation of the landlord and tenant constitutes a historical and economical problem, which has ever since the commencement of the British administration been, in one part of the country or another, the subject of prolonged consideration and keen controversy; and it is obvious that a topic of so much intricacy, and involving so many minute and technical details, cannot be treated in this report with all the fulness it deserves. We must therefore content ourselves with an attempt to touch only on its principal characteristics and to suggest, in a general way, the measures which we recommend for the improvement of the legal position of the tenants. We shall first give a brief sketch of the origin and rise of these tenures, then an account of the condition in which they now exist, and lastly make such proposals as seem likely to result in the improvement of that condition.

Importance of a sound law of tenure to the well-being of India.

9. The character of the tenure as affecting the rights and general position of the occupants of the soil is of more vital importance in India than in countries where there are other fields of employment for the masses of the population, to which, if unable to earn a fair subsistence as tenants, they can turn for the means of livelihood and the opportunities of acquiring wealth. In India, the rural population is, for the present at any rate, bound to the soil, and precluded by the general conditions of its existence from seeking in other forms of employment an escape from any hardships and oppressions to which it may be exposed by the existing system of tenure. A consideration of this fact, of the vast numbers of the persons concerned, and, what is of equal importance, of the general recognition of a limited right in the land as inherent in large classes of tenants, renders it impossible for the State, as the guardian of the common interests of the community, to leave the mutual relations of the payers and receivers of rent to adjust themselves by competition and the ordinary rules which govern commercial contracts.

Origin of tenant-right in India.

10. It has always been an accepted principle in India that the occupant of the soil is entitled to remain there from generation to generation, provided he pays the portion of the produce which may be demanded of him by Government or by some superior holder or landlord, and this proportion has generally been fixed by local custom. But the tenant was often in a position to enlarge this right, and place it on a firmer basis. As a rule, the superior holders, unless they carried their tenants with them, and had their support in war as well as in cultivation, could not make head against the officers of the native Government, who practically exacted the maximum amount that could be paid; and hence the tenants had to be conciliated by privileges, such as low rents and fixity of tenure. In the less populous tracts, again, the same result was produced by the fear of the tenant absconding, and by the impossibility of replacing him. Rights of this kind, when once acquired, were naturally conserved and strengthened by the general feeling, that whatever is old ought to remain unaltered. The native Governments also threw their weight into the same scale, by reason of their knowledge that the payment and growth of the revenue depended on the contentment and prosperity of those who cultivated the soil; and hence it was commonly

made a condition of the tenure of the superior holder that he should not only pay the Government revenue, but also should foster the spread of cultivation and keep the ryots contented.

Views of tenant-right in Bengal, held at the beginning of British administration.

11. When the early British rulers began to look into the question, they were universally impressed with the belief that the rights of the tenants were co-ordinate with those of the landlord, and equal to his in point of permanence. The author of the Permanent Settlement in Bengal considered the position of the tenant no less entitled to protection and security than that of the landlord, and undoubtedly intended to place the one on as assured a footing as the other. Their object, it was observed at the time, was to "secure to the great body of the ryots the same equity and certainty as to the amount of their rents, and the same undisturbed enjoyment of the fruits of their industry," as was conferred by that measure on the zemindars. When sanctioning Lord Cornwallis' scheme, the Court of Directors wrote: "Our interposition, where necessary, seems also to be clearly consistent with the practice of the Mogul Government, under which it appeared to be a general maxim that the immediate cultivator of the soil should not be dispossessed of the land he occupied. This necessarily supposes that there were some measures and limits by which the rent could be defined, and that it was not left to the arbitrary determination of the zemindar, for otherwise such a rule would be nugatory." The same principle was on various occasions approved both by the Government of India and the Court of Directors, the Court on one occasion observing that "the faith of the State is as solemnly pledged to uphold the cultivator of the soil in the unmolested enjoyment of his long-established rights as it is to maintain the zemindar in possession of his estate, or to abstain from increasing the public revenue permanently assessed upon him." There is, indeed, good reason to suppose that for many years after the establishment of the Permanent Settlement, the relation of the so-called landowners, who paid the revenue to the occupiers, who paid the rent, was regarded rather as that of a superior to an inferior contributory to the same impost than as that of landlord to tenant in the ordinary acceptation of the terms. In their letter of the 15th January 1819, the Court of Directors observe "that consequences the most injurious to the rights and interests of individuals have arisen from describing those with whom the Permanent Settlement was concluded as the actual proprietors of the land." "This mistake," they continue, "and the habit which grew out of it of describing the payments of the ryots as 'rents' instead of 'revenue,' have introduced confusion into the whole system of tenures; have given a specious color to the pretensions of the zemindars in acting as if they were, in the ordinary sense of the word, proprietors of the land, and as if they the ryots had no permanent interest but what they derived from them." Another important limitation of the proprietary rights of the original grantees under the Permanent Settlement was that the Government not only declared it to be the duty of the zemindars "to conduct themselves with good faith and moderation towards their dependent talookdars and ryots," and to enjoin similar conduct on their agents, but reserved to itself the right of any further legislation that might be considered necessary for the protection of these classes. The same regulation which created the rights of the zemindars contained the proviso that "it being the duty of the ruling power to protect all classes of people, more particularly those who from their situations are most helpless, the Governor-General in Council will, whenever he may deem it proper, enact such regulations as he may think necessary for the protection and welfare of the dependent talukdars, ryots, and other cultivators of the soil." It was added that no zemindar should be entitled to make any objection to his assessment on this account.

Court of Directors, 19th September 1792.

Court of Directors, 15th January 1819.

Regulation I of 1793, Article 7.

Tenant-right in Upper India.

12. The rights thus asserted in the case of the Bengal ryot existed, there is reason to believe, in a more or less complete form in every part of India. "There is a very general consent," writes Sir W. Muir, speaking of a judgment of the Calcutta High Court, in which the whole subject had been minutely considered by the entire Bench, "that in the native state of things the resident ryot, simply as such, is, throughout the Continent of India, possessed as a rule of a right of hereditary occupancy at the customary rates of the vicinity." But such a right was liable to become obscure under a system in which the landholders were recognized as possessing virtual proprietorship in the lands for which they paid revenue, and the intentions of the Government to provide for its adequate maintenance were for a long period not carried into execution. With the lapse of time it became more and more difficult to ascertain what were the precise rights of tenants, and what were the customary rates of rent. It is true that regulations were passed directing that the rights of the ryots should be protected and preserved, and this was most emphatically inculcated in those Regulations and Acts which prescribed the procedure in making a settlement of the land revenue in the North-Western Provinces, but no legislative enactment distinctly formulated the nature of these rights, or the mode of testing their existence, or of recording them. While the theory was that all existing rights should receive equal attention, and while the benefit likely to accrue to the cultivators was avowedly one of the principal objects of the settlement made for long periods, there grew up a generally-exaggerated estimate of the proprietary rights of the landlords, and a corresponding depreciation of the tenant's position. English ideas of proprietorship were allowed to obscure the important limitations to which, in India, proprietorship was subject, and a tendency arose for the landlord to become an absolute owner and the cultivator a rack-rented tenant at a competition rent."

APPENDIX III.

REVENUE DEPARTMENT.

LAND REVENUE No. 710T.

Darjeeling, { DATED THE 11TH July / ISSUED THE July } 1881.

From—A. MACKENZIE, Esq., Secretary to the Government of Bengal,
To—The Secretary to the Government of India, Revenue and Agricultural Department.

With reference to paragraph 4 of your letter, No. 583, dated 27th December 1880, I am directed to submit a copy of a letter No. 1357½A, dated 3rd June 1881, from the Board of Revenue, giving a very clear history of the recent interference of the civil courts with the State demand of revenue in Bengal, and of the practical effect of such interference upon the work of settlement.

2. The Lieutenant-Governor has nothing to add to the facts set forth by the Board. There can be no doubt that the difficulties described by them as affecting revenue settlements at the present day are merely those which surround the whole question of enhancement of rent in Bengal. As to this, the Lieutenant-Governor will shortly address the Government of India in connection with the pending revision of the Rent Law. He believes that the general remedy to be there suggested by him will also remove the special difficulty in regard to settlements now under notice.

3. While reserving, therefore, for the present any practical suggestions with reference to the subject-matter of the Board's letter, the Lieutenant-Governor desires me to submit the following remarks on some of the special points discussed by them :—

(*a.*) *Paragraphs 11 and 12 of the Board's letter.*—It is doubtful whether Mr. Dampier does not in these paragraphs lay too much stress upon the supposed effect of the change of the tribunal for the trial of rent-suits from the revenue to the civil courts. The revenue officers at first no doubt gave enhancements easily, and their decisions were not much disputed. But as the mooktears and vakils became better acquainted with the law itself, and as the impossibility of applying in practice the principles of enhancement involved by the High Court became better known, the times of easy enhancement ceased, and that, too, long before the transfer of rent-suits to the civil courts. In any case, even had that transfer not taken place, it should be remembered that the civil courts were the appellate tribunals in all enhancement suits (*vide* sections 153 to 160 of Act X of 1859), and it is quite certain that they would have insisted, and were indeed bound to insist, on the revenue courts working on regular judicial lines, and thus, as appeals necessarily multiplied, all the difficulties now felt would have come into prominence, even had the transfer of jurisdiction never taken place.

(*b.*) *Paragraph* 15.—The facts which have been brought so prominently to the notice of the Board in Midnapore (where the ryots resisted strenuously an enhancement of 60 or 70 per cent., after having had no change in their rents for many years) have led Mr. Dampier to infer that all over Bengal the occupancy ryots are as a body able successfully to resist enhancement. The evidence before Government does not, however, bear out this theory. No doubt great difficulties lie at present in the way of any landlord endeavouring to secure the enhancement of the rent of an occupancy ryot by due course of law, but the zemindars, knowing this, have turned the difficulty by setting themselves to break down the occupancy right; and it is just as hard for a ryot to adduce legal proof of that right as it is for a zemindar to prove his right to any particular enhancement which he may choose to claim.

The Lieutenant-Governor believes that a radical amendment of the rent-law is necessary to remove the constant friction produced between landlords and tenants in Bengal by the existing state of things. Hitherto, perhaps, the ryots have had rather the best of the struggle, especially in Eastern Bengal; but there is much reason to believe that the tide is turning, and that the rights of the ryots must, in the general interests of the country, be also placed on a clear and permanent basis.

(*c.*) *Paragraph 37.*—Again, the notion that "large numbers of occupancy tenants are yearly becoming tenants holding at fixed rates by the operation of the 20 years' presumption" is not borne out by the reports of district officers. Nothing is easier than to rebut the presumption in question, as, in the absence of a formal deed creating a permanent tenure, proof of a single variation in the rent is enough for this purpose. The Lieutenant-Governor is disposed to think that these privileged tenures should once for all be registered and recorded, but he does not believe that they are so commonly pleaded as the Board, taking rather hastily the zemindari view of the question, seem to imagine.

(*d.*) *Paragraphs 35, 36.*—It would of course be very simple to make the revenue authorities in Bengal as absolute in fixing rent rates in settlements as they are in the North-Western Provinces, and as they practically were in Bengal until 1859. The Lieutenant-Governor, however, agrees with the Board that grave objections exist to the enactment of such a provision at the present day. The effect of making the Collector absolute in estates under settlement, or coming into Government hands, would, as the Board remark, be to apply one law to private property and another to Government estates, as regards rent payments, privileges of tenants, and other similar matters. If, therefore, the civil court is to retain jurisdiction in ordinary enhancement cases, the Lieutenant-Governor would, with the Board, deprecate its entire exclusion from all jurisdiction in settlements.

(*e.*) *Paragraph 41.*—The remedy which the Board would prefer to see applied is that suggested in the Rent Commission's Bill, under which the determination of rates of rent in all disputes on a large scale between landlords and tenants would be transferred from the civil courts to the revenue officers. They would give such officers, when appointed to settle rates, a temporary jurisdiction to try all enhancement suits filed within a certain defined period. The Lieutenant-Governor hopes to be able to suggest shortly a simpler plan for settling rent-rates than that put forward by the Rent Commission. He will therefore only say here that he has no doubt that the only satisfactory mode of regulating enhancement of rent, whether in private or Government estates, is by placing it under the control and direction of the revenue officers of Government. The civil courts have shown themselves incapable of dealing with the economic problems involved in such cases. They have given no satisfaction to the landlords. They have only succeeded in complicating the operations of revenue settlement. In the general interests of the country it is essential that something should be done to substitute a simple and practical procedure for the present unworkable system. How this can best be done the Lieutenant-Governor will, as already stated, discuss in connection with the revised Rent Law which he is about to submit for the orders of the Government of India.

No. 357½A., dated Fort William, the 3rd June 1881.

From—H. J. S. COTTON, Esq., Offg. Secy. to the Board of Revenue, Lower Provinces,

To—The Secretary to the Government of Bengal, Revenue Department.

THE HON'BLE H. L. DAMPIER.

I AM directed to acknowledge your No. 135-64LR, of the 18th January 1881, forwarding copy of the letter of the Government of India, No. 583 of 27th December 1880, reviewing the Board's Report on the Land Revenue Administration of the Lower Provinces for 1879-80.

2. In paragraph 2 of the orders of the Bengal Government, the Board are directed to submit first the full report called for on the Mojnamuta and Jellamuta settlements, giving not merely a succinct account of affairs in Midnapore, but tracing the history of the interference of the Civil Courts with the State demand of revenue, and citing from the records of the Board's Office instances of the manner in which such interference has worked.

3. It seems to Mr. Dampier that it will be most conducive to clearness and continuity in this report if the historical narratives of the principal settlements referred to in it are kept separate and given in the form of annexures, and the Board's report devoted to a discussion of the main question of the origin of the intervention of the Civil Court, the practical effect of such intervention, and the remedies which suggest themselves.

4. The principal law by which settlements have hitherto been made in Bengal is Regulation VII of 1822. Section 9 of that Regulation describes the detailed investigations to be prosecuted by collectors and other officers making or revising settlements; it directs, *inter alia*, a record to be formed—

"of the rates per beegah of each description of land or kind of produce demandable from the resident cultivators not claiming any transferable property in the soil, whether possessing the right of hereditary occupancy or not;"

and the concluding portion is thus worded—

"The information collected on the above points shall be so arranged and recorded as to admit of an immediate reference hereafter by the Courts of Judicature, it being understood and declared that all decisions on the demands of the zemindars shall hereafter be regulated by the rates of rent and modes of payment avowed and ascertained at the settlement and recorded in the Collector's proceedings until distinctly altered by mutual agreement, or after full investigation in a regular suit."

5. Act X of 1859 was not, as Mr. Dampier believes, intended to modify in any way the law of settlements; but section 13 contained a provision that no tenant's rent could be enhanced without service of a notice specifying the grounds of enhancement, which grounds, so far as occupancy ryots were concerned, were enumerated in section 17; and the following decisions of the High Court will show the effect of these sections on the legal validity of settlements.

6. The first case of importance that the Board have been able to trace was decided in the High Court in 1866. A Deputy Collector had made a settlement in a Government estate in Moorshedabad, and drew up a jamabandi or roll of the rents demandable from the tenure-holders and ryots as part of the settlement proceedings. The estate was then sold to Ram Lal Ghose, the plaintiff, who sued the defendant, the Nawab Nazim of Bengal, for rent at the rate set forth in the jamabandi. The defendant, who had not signed the jamabandi, resisted on the ground of no notice having been served. Both the Moonsif and Judge held that the proceedings of the Settlement Officer were binding, especially as the defendant had not taken action to question them under section 9, Regulation VII,

W. R., Vol. VI, Act X, page 5.

It is an undisputed fact in this case that the lands the rents of which plaintiff, sue to collect without further notice at the rates of the jamabandi, were originally those of a khas mehal of Government; that some time afterwards Government made a settlement and jamabandi (as part of that settlement), and then transferred its own rights to plaintiff by sale. This being so, the question arises—What was the right of Government in its khas mehal so settled? We hold, as it has always been held, that such right was no more than that of any other zemindar. Would, then, any other zemindar, by making a jamabandi, be relieved of the necessity of serving a notice under section 13,

Act X of 1859? We think not; and that consequently, as Government did not transfer to plaintiff any more than the rights of an ordinary zemindar, plaintiff cannot avoid the legal duties of an ordinary zemindar in this case, *viz.*, that of giving notice to enhance, as the law, section 13, Act X of 1859, requires. The Lower Appellate Court, we observe, relies on section 9, Regulation VII of 1822; but that law is one for settlements, not one for collections of rents, and specifies how remedies are to be sought against the acts of Settlement Officers as such, and does not provide that private zemindars seeking enhanced rents are to have them without giving notice to enhance. We think, then, that the plaintiff, claiming from Government as a private zemindar, and being of course in no better position than that, can only have his enhanced rents when he sues for them under the provisions of the Rent Law in force when he sues, *viz.* by notice under section 13, Act X of 1859.

1822; but the High Court (Bayley and E. Jackson, J. J.) overruled their decision, holding that Government, in making a settlement in a Government estate, was in the position of an ordinary zemindar, and was bound to follow the procedure of section 13, Act X of 1859, and serve a notice. The material portion of the judgment is given in the margin.

It will be seen that this decision distinctly stated as unquestionable that the right of Government in the settlement on revision of assessment of a Government estate or khas mehal was no greater than that of any other zemindar in his estate.

W. R., Vol. XVI, page 153.

7. The next important case was decided in the High Court in 1871. In 1869, the Commissioner of the Soonderbuns had been re-settling a talook. The defendants in the suit had agreed to pay 12 annas a beegah for the land comprised in their tenure, if the settlement was made with them, this being four annas a beegah more than they had previously paid; but the Settlement Officer, while recording the defendants in his jamabandi as izahari ousut talookdars, and the rent demandable from them at the 12 annas which they had offered, made the settlement of the whole talook with the plaintiff. The plaintiff sued the defendants at the rate entered in the jamabandi, and the suit was defended on the ground that the defendants' consent had been conditional on their obtaining the settlement; that as they had not obtained it it was not binding; and that no notice of enhancement had been served.

The Judge decided in favour of the defendants, relying on the High Court's decision last quoted; and the High Court (Norman, C. J., and Loch, J.) upheld the decision. An extract from the judgment of Norman, C. J., is given in the margin.

But with regard to cases where the under-tenant enters into no fresh engagement at the time of the re-settlement, we must observe that the language of section 13 of Act X of 1859 is perfectly general. Its terms are wide enough to secure to every under-tenant holding or cultivating land, under the conditions therein mentioned, a right to receive a written notice containing certain particulars before he can be called on to pay any higher rent for such land than the rent paid during the preceding year. Whatever, therefore, might have been the effect of a re-settlement and re-assessment under section 7 of Regulation VII of 1822, and of the record of the Collector made at the time of such re-settlement under section 9 of the same Regulation, with reference to the rights of under-tenants before the passing of Act X of 1859, we think that the provisions of sections 7 and 9 of Regulation VII of 1822 must now be read as qualified by section 13 of Act X of 1859.

The decisions,* amounted to a declaration that the authority with which the settlement law invested the proceeding of a revenue officer when settling the amount of revenue to be assessed on an estate in which a private proprietor stood between the Government and the ryot or tenure-holder was withdrawn, if the revenue to be assessed was to be collected on behalf of the Government from the ryots themselves; in other words, that the later law, passed for the protection of ryots against their landlords, had the effect of overriding the earlier law, passed for the protection of the public revenue, and of virtually setting aside the principle that the State should be unfettered in the exercise of its paramount right of determining the share of the produce of the soil which should be taken as revenue for State purposes.

* Of 1866 and 1871.

8. The next case is somewhat similar to that first cited. The Government was six-anna proprietor in an estate in Dinagepore, of which the Collector made a settlement and drew up a jamabandi. The whole estate was then purchased by the plaintiff at public auction, and he sued the defendant for rent at the rate entered in the jamabandi. Kemp and Glover, J. J., held that as the defendant had not signed the jamabandi, it was not binding on him, and a notice of enhancement was necessary, the decision last quoted being expressly referred to as an authority.

W. R., Vol. XX, page 207

9. The last decision which it is necessary to refer to occurred in respect of one of the very estates the settlements of which have been conducted with so much difficulty—Balarampore in Midnapore. This also is a Government estate, and in the course of settlement the rent of the defendant was enhanced from ₹20 to ₹53-9 2. The husband of the defendant signed the jamabandi. A lease of the estate in farm was subsequently given on behalf of Government, at a contract rate, without any express confirmation of the proceedings, to Messrs. Watson and Company (the plaintiffs), who sued Durgamoni Dasi, the defendant, for the enhanced rent recorded by the Settlement Officer. The High Court in appeal (Markby and Birch, J. J.) decided in favour of the defendant, as will appear from the marginal extract.

W. R., Vol. XXI, page 410.

Both the lower courts have found that Kenaram had no authority to sign the jamabandi on his wife's behalf, and this is a finding of fact not assailable in special appeal. Both courts have also found that the entry in the jamabandi raised the rent from ₹20 to ₹53 9-2. These findings amount to this, that the Settlement Deputy Collector arbitrarily raised the rent of the tenant, although he was not authorized so to do, and entered in the jamabandi this arbitrary rate. A Settlement Officer is bound to record in the jamabandi the existing rights of cultivators, and he cannot impose an enhanced rent without causing a notice to be served on those entitled to notice. If he acts in contravention of the law, and enters in a jamabandi a higher rate of rent than the tenant admits to have paid in previous years, and does so, as has been found in this case, in spite of a protest on the part of the tenant, such entry does not exclude the tenant from showing, when he is sued for rent, that the jamabandi does not correctly represent the conditions of his tenure, and that he is not liable for the rent therein recorded, the correctness of which he has never admitted. What the Judge has substantially found is this, that the Deputy Collector had no right to increase the rent of the tenure without due notice, and that the tenant is not bound by the entry the Deputy Collector improperly and illegally made in the jamabandi. We cannot say that the Judge in so holding has taken an erroneous view of the law.

10. These decisions limited considerably the powers which the Revenue Officers had been in the habit of exercising in the course of settlement of revenue. In the absence of any provisions in the law strictly defining their powers or protecting the ryots against enhancement, these powers had amounted to fixing the rents demandable from ryots, at what, in the exercise of their discretion, they considered to be fair and equitable amounts. The instructions of the higher revenue authorities addressed to the executive settlement officers teem with injunctions to moderation.

The rents when so recorded as demandable were considered as authoritatively fixed until an alteration was "distinctly allowed by mutual agreement or after full investigation in a regular suit."

Under these decisions, however, in no case, whether in the re-settlement of a Government estate or of a private estate, could a Revenue Officer enhance the rent of an occupancy ryot without previously serving him with a notice, as required by section 13 of the Act of 1859, which also required that the grounds on which the enhancement was claimed should be stated, such grounds being expressly restricted, in the case of occupancy ryots, by section 17 of the Act, to those specified in that section; and then, after all, if even after receipt of notice, the tenant refused to sign the jamabandi, the proprietor, whether Government or a private individual, was obliged to establish its case *ab initio* before a regular tribunal before enforcing the Settlement Officer's rates.

In fact the Settlement Officer's valuation of the rent fairly payable carried no more authority than it would have done if made by the landlord himself.

No alteration was made in the law in this respect till 1878.*

* Bengal Act III of 1878.

In former years, in Bengal as in other provinces, Settlement Officers have been able to rely as much on their prestige as on their legal powers. The sequel of this narrative will show that the difficulties with which the making of settlements has become beset are due even more to the blow which has been struck at the moral influence of the Settlement Officer than to the diminution of his coercive authority; for the restoration of the *primâ facie* validity of the Settlement Officer's jamabandis or rolls of enhanced rents (until proved to be incorrect in a Civil Court), which has been enacted by the last Settlement Act VIII (B.C.) of 1879, has failed, hitherto at any rate, to have the effect of leading to the voluntary acceptance of those jamabandis by the tenants as they used to be accepted before the difficulties with which Act X of 1859 had surrounded enhancements of rent were discovered.

The extent to which the moral influence of the Settlement Officer has been lowered may be estimated from two incidents which occurred in the course of the Midnapore settlements. On one occasion the ryots of a village refused to go near the Settlement Officer who had visited their village, saying that they would not even discuss with him the question of paying enhanced rents; they denied that their rents could be raised, and would discuss the question only in the Civil Courts.

In the other instance, specimens from the crops of a village had been cut in two consecutive years by the Settlement Officer for the purpose of ascertaining the outturn by actual weighment.

In the third year the ryots positively refused to allow him to cut any specimens for experiments, although he offered to pay for what he required.

Such stories would be incredible to Settlement Officers of the last generation.

The diminution of the moral influence of the Revenue Officers as a body is due, not only to the discovery of the technical difficulties with which the requirements of Act X of 1859 beset the enforcement of the rates recorded by them as demandable in their settlement jamabandis, but also very materially, if not so obviously, to the Bengal Act VIII of 1869, which transferred the jurisdiction over rent suits from the Revenue to the Civil Courts, the effect of which requires full explanation, in the course of which it will be necessary to review the relations between the zemindars generally and their ryots, as bearing on the present question, although not at first sight comprised in it.

11. For some years after 1859 no practical difficulty was experienced in making settlements as before. Even the decision of 1866 does not seem to have proved any embarrassment, and this was to a great extent due to the fact that the zemindars themselves were able to enhance whenever prices had risen. So long as enhancement cases were tried by the Revenue Courts, the zemindars experienced no great difficulty in gaining a large proportion of their suits. The Revenue Officers seem to have entered upon the cases before them with the knowledge that, as a rule, prices of produce had risen very much since the year 1857 (say), and that where rents had not been recently revised, they were in general far below the normal competitive rates; hence they were satisfied with such evidence as was adducible, and the zemindars throughout the country having succeeded in a certain number of test-cases from their respective estates, or having seen the results of such cases from adjoining estates, were able to settle with their ryots generally on reasonable terms without having recourse to the Courts. What the zemindars were able to do the Settlement Officers—often the Collectors themselves or their immediate subordinates—were still more able to do, and, as a fact, such settlements as were made between 1859 and 1869, or even a year or two later, presented in general no more difficulties than those made prior to the passing of Act X of 1859. The ryots looked upon the Settlement Officer quite as much in the light of a protector to guard them against unreasonable enhancement, as in the light of a landlord's agent bent on raising their rents, and the proceedings were generally carried through to completion in an amicable manner.

12. The transfer of rent cases to the Civil Courts very soon brought about an entire change. These Courts trying enhancement cases by the ordinary rules of evidence, soon brought out the fact that, however notorious it might be that the rents of tenants were too low, the onus of establishing his case by full legal proof lay entirely on the landlord, and that this onus was not easily discharged. He had first to prove that he had served the enhancement notice according to law, and as the proof of this depended on the evidence of process-servers—not too intelligent or too honest—it was very often found possible to make this proof defective. In the next place, it was necessary to show that the notice had been in due form, and in this respect it was found that the requirements of the Civil Courts were very different from those of the Revenue Officers. A notice must not merely be an announcement of an intention to enhance, citing all the legal grounds of enhancement, but must be a well-considered docu-

ment, almost as complete as a plaint, indicating the precise grounds on which the liability to the proposed degree of enhancement was to be established. So difficult has it been found to be to comply with the requirements of the Court in this respect that, as this report will show, the Revenue Officers of Government, even aided by legal advice, have often found it extremely embarrassing to frame such notices as would be considered valid in Court, and many enhancement suits on behalf of Government have been thrown out on this ground. In this way the zemindars soon found that a large proportion of their suits were defeated by preliminary objections, and even when they did reach a trial on the merits, so difficult was it to supply such evidence as would satisfy the Courts, that almost without exception the cases broke down.

If, as may perhaps be admitted, the Revenue Courts had been too easily satisfied as to the evidence required to establish enhancements of rents, the pendulum had now swung too far the other way, the difficulty of enforcing the right in the Civil Courts amounted to a partial denial to the landlords of that share of the unearned increment of the land to which the substantive law recognizes their right.

13. A recent instance of this difficulty may be given from a case in which the Government, as holder of a tenure in a private estate, attempted to enhance the rents of the ryots in a certain village. The witnesses adduced to prove facts consisted chiefly (1) of the zemindari servants of the zemindar under whom the Government held; (2) of the tenants of that zemindar in other villages with which the Government was unconnected; and (3) of the ryots of neighbouring villages, tenants of other zemindars.

With regard to classes (1) and (2) the Munsif presiding in the Civil Court was of opinion that their evidence could not be relied on, because the zemindar (the landlord of Government) was interested in the success of Government, inasmuch as if the Government succeeded in enhancing the rates of its ryots' rents the zemindar would be able to use these decisions as a lever for raising the rents of other ryots on his estate.

With regard to the witnesses in class (3), who were produced to prove the rates paid by lands of the same quality with equal advantages in the neighbourhood, the Munsif was of opinion that their evidence could not be relied on, because, being ryots of another village than the one which was the subject of the suit, it was not credible that they should have any such intimate acquaintance with the lands in question as to be able to pronounce certainly that they were of the same quality as any other given lands. Where, then, was satisfactory evidence to be looked for?

14. In fact such questions as the rates paid for similar lands with similar advantages in the neighbourhood, or the prevailing prices of produce at two different periods, cannot well form the subject-matter of rigorous proof before an officer sitting miles away from the land, and deciding on evidence, mostly oral, produced before him in Court. Eventually, as this letter will show, the Government, aided by the best legal advice, after minute local enquiries, extending even to actual experiments in weighing the produce of specimen crops in three consecutive years by highly paid Revenue Officers, and after carefully recording and securing the evidence by which each point as ascertained by their enquiries could be legally established, has succeeded in making enhanced assessments of ryots' rents through its Settlement Officers which it has been able to support by going over all the ground of evidence again when the enhancements were contested before the Civil Courts; but this has only been accomplished after experience gained by many reverses and by the aid of two Acts to remove technical difficulties, and it is not a matter of surprise that, as ordinary zemindars are without these advantages, in almost every case the defence has succeeded in representing the evidence as wanting in completeness and in obtaining a decision in its favour, the burden of proof being on the landlord.

15. It resulted that in a few years after 1869 an entire change came over the country; zemindars began to look upon enhancement by legal means as impossible, and the unscrupulous fell back upon their power of harassing the

ryots by means, legal or illegal, and conspicuously among the former by exercising their right to sue for each instalment of rent the day it became due, as the only method of bringing the ryots to terms. In this way some zemindars have succeeded in coercing the ryots into assenting to enhancement, and thus in keeping up their rents, perhaps, to competition rates; but the more peaceably-disposed and law-abiding, as well as the weaker landlord—those who are most entitled to the consideration and protection of Government—have had to give up the hope of enhanced rents almost entirely, and during the rapid development of the country which has been going on of late years, their tenants have succeeded in appropriating to themselves the whole of the unearned increment of the land. They have learned their power, they have learned to look upon enhancement by legal means as almost a chimera, and to consider the rates of rent which they now pay as virtually fixed and not susceptible of increase.

16 The estates which are periodically liable to a re-settlement of the demand of revenue are of two classes,—those which are private property, but on which the revenue demand has been fixed for a limited period only,—and those which are the property of the State, in which the revenue received by the State is identical with the amount of rent paid by the tenants holding directly from the State as landlord. As a general rule such estates are scattered among permanently-settled estates. Naturally enough the ryots have proved unwilling to accept a position of inferiority as regards their power to resist enhancement. Seeing that the ryots in the estates around them have been able to resist successfully, they have ceased to look upon the Settlement Officer as a kind of arbitrator, who would on the one hand increase their rents with moderation, but on the other protect them against immoderate enhancement, and they have come to regard him as an unwelcome intruder, endeavouring to make them pay more by the exercise of Government authority than they could be made to pay if they were ryots in an ordinary permanently-settled estate. This is especially illustrated in the most typical case of all—annexure No. I, Balarampore. In a large portion of that estate the class of tenants holding directly under the Government, whom the Civil Court has subsequently recognized as the ryots with the legal rights of occupancy, were in fact substantial middlemen called aymadars, the actual cultivators of the soil being in the position of their korfa or sub-ryots, on whom the law, as generally understood, recognizes no rights of occupancy. In the rest of the estate there were no aymadars, and the actual cultivators possessed the legal occupancy right. The cultivators under the aymadars, being liable to the demands of the latter, regarded the Settlement Officer as their protector, and readily agreed to whatever rents he considered equitable being recorded as payable by them. The Settlement Officer himself said that he could have obtained their consent to even higher rates had he thought it just or expedient to record them as demandable. But in the case of the cultivators with the legal right of occupancy the case was very different, though the proposed enhancement of rents in their case was slight, they had learned from experience in neighbouring estates that the occupancy right had come to mean practical immunity from enhancement, and they were no longer willing to agree to any enhancement, however moderate.

17. This is only one illustration of the feeling which is now becoming general in many parts of Bengal. As long as cultivators with rights of occupancy saw that enhancement of rent followed as a natural consequence on increased profits due to a rise in prices, Settlement Officers, provided they conducted their operations with judgment and moderation, could be sure of success; but the position of these officers was entirely altered as soon as the tenantry became aware that enhancement suits almost invariably failed.

18. The difficulties of conducting settlements successfully under the altered condition of affairs was brought most prominently to notice by the settlements in the Midnapore district. The settlements of some large temporarily-settled estates in that district were about to expire, and there were also some considerable Government estates which needed re-settlement. Accordingly

Mr. J. C. Price, an officer of about 11 years' service, was in the end of 1872 appointed Settlement Officer in that district.

19. The first estate in which he effected a considerable enhancement was the temporarily-settled estate of Boita Kalianpore, in which he raised the revenue from Rs. 3,291 to Rs. 9,800, the previous regular settlement having been made about thirty-three years previously in 1841.

The tenures in this estate were not very dissimilar from that of Balarampore as described below. Villages were found to be held by head ryots called jote mandals, with whom the settlement was made, an allowance being given them of 15 per cent. on the rent-roll of their under-ryots.

This settlement marks the limit of the period up to which the Settlement Officer could measure and assess rents amicably. Although many references and appeals were made to the superior revenue authorities, no suits were brought to contest the proceedings, and the settlement was finally approved in 1875.

20 After measuring Boita Kalianpore, the Settlement Officer took up Balarampore, a Government estate with a revenue in 1870 of above Rs. 7,000, which had been purchased at a sale for arrears of revenue in 1838, owing to a combination among the neighbouring zemindars to abstain from bidding. This state had been re-settled by a Deputy Collector on the district staff during the years 1866-70, but after the measurements had been completed and the rent-roll prepared, the Commissioner declined to keep the estate under direct management, and farmed it, without specification of the tenant's rental, to Messrs. Watson and Co., large indigo-planters in Midnapore. Against this order appeals were lodged, and just at that time the policy of the Bengal Government, as regards farming estates, underwent an entire change. Orders were therefore issued disallowing the farm from the end of the third year, and directing the newly appointed Settlement Officer to re-settle the estate in the regular manner Thus commenced, in the cold-weather of 1873-74, the settlement which first brought into full light the difficulties of a Settlement Officer, and illustrated, even better than the larger settlements of Majnamuta and Jellamuta, the tediousness and expensiveness of the settlement law in force in Bengal as construed by the High Court.

21. A full account of this settlement forms annexure I, attached to this report. Here it will suffice to say that it is now at length, in 1881, approaching completion, that Government has gained almost every case regarding rates that has been brought up to the point of a trial on the merits, showing that the rates demanded would fully bear enquiry, and yet it has gained them after such an amount of delay, expenditure, and litigation as to neutralize almost entirely the pecuniary advantages of the settlement, while the cultivators have been harassed by conflicting orders and demoralized by the taste for litigation which they have imbibed.

22. It was in a suit in connection with this estate that one of the High Court decisions referred to above was given. Messrs. Watson and Co. during their farm sued one of the tenants for the rent recorded in the jamabandi drawn up in the course of the settlement of 1866-70. The husband of the plaintiff had signed this jamabandi, but the lower courts found as a fact that he had had no authority from his wife to do so, and the High Court, applying the law to this fact, treated the jamabandi as invalid without the consent of the wife, who was the recognized tenant. This drew attention to the advantage that might be derived from contesting settlements in the Civil Court, and to this it is probably due that the bulk of the tenants in the estate who had rights of occupancy refuse to accept the Settlement Officer's rates, a resolution, however, which was no doubt accentuated by the enhancement proceedings following so soon after the previous settlement.

23. A portion of the estate was held by substantial middlemen—and as the actual cultivators readily accepted Mr. Price's terms, the question arose

as to the legal rights of these middlemen. Litigation followed, which it is unnecessary to follow up as it is not illustrative of the subject of this report. The Settlement Officers exceeded their powers, and the Civil Courts applied a remedy in the exercise of powers which no one would propose to withhold from them.

24. In those parts of the estate where there were no aymadars it was necessary for the Government as landlord to institute enhancement suits under Bengal Act VIII of 1869, as the settlement had been concluded too soon to enable the new Acts of 1878 and 1879 to be applied. As soon as litigation was inevitable, it was found that the enhancement notices which had been served by the Settlement Officer would not satisfy the requirements of the Civil Courts as determined by the latest decisions. Mr. Dampier, on behalf of the Board of Revenue, therefore determined to sacrifice all claim to enhanced revenue for three years, and to serve fresh enhancement notices before bringing suits. At last six suits were brought, all of which were decreed in full in favour of the Government. Government then succeeded in 47 more suits, the ryots on the day of trial admitting the fairness of the rates. The result has been that by their tactics these ryots have succeeded in escaping payment of the enhanced rent of three years, the enhancements having been originally made by the Settlement Officers and being such as the ryots themselves have eventually, and without allowing the suit to come to trial, admitted to be fair and reasonable. From the time of the decision of these suits the ryots against whom no suit were instituted are coming in and accepting the enhanced rents, and at the date of the latest report only 58 out of about 1,100 ryots in Balarampore *cum* Bagbinda still stood out. It may now be hoped that the litigation will be finally concluded in the current year, and that from the year 1882-83 the new rental will be demandable over the whole of the estate. The settlement on that rental was originally finally sanctioned by the Revenue authorities in 1875. The policy had, however, been to await the result of the test-suits as regarding the enhanced rates before enforcing the enhanced demands against the main body of the ryots who remained passive. The result was that, under the law which was in force when this settlement was concluded and which is applicable to it, the time elapsed within which suits could be instituted for the realization of the rents in respect of which enhancement notices had actually been issued, so that the main body of ryots escaped payment of the enhancement for a still longer period than those against whom the test-suits had been instituted; this result could only have been avoided by instituting suits against every individual ryot before the expiration of the term allowed by the enhancement notices. It was of course expedient, both in the interests of the Government and of the tenants, to avoid this flood of litigation, if, as has been the case, the test-cases were sufficient to bring about a general settlement of the question in dispute. This policy has been adopted in the cases of some other settlements also; it is one of moderation, but entails a large sacrifice of the public revenue.

25. Annexure II refers to Majnamuta and Jellamuta, temporarily-settled estates, the property of private zemindars, which are also situated in the Midnapore district. The measurement of these estates was commenced by the Settlement Officer in 1874, and it soon became apparent that opposition would be encountered there as it had been in Balarampore. At the last temporary settlement in the year 1845, the net revenue on these estates had been assessed at about Rs. 1,12,000 and Rs. 93,000, respectively, and it became evident that in view of the large increase of cultivation, and also of the great rise in the value of produce since the rates of rent were last fixed, the new revenue demand could fairly be fixed at an enhancement of 60 to 70 per cent. At the same time it was patent that the zemindars would never think of accepting the settlement on these terms, unless the enhanced rents on which it was founded were previously made binding on the ryots. Hence the Government had to contemplate the contingency of a long period of direct management after settlement, devoted to litigation on a vast scale to enforce the settlement rates. The question attracted the attention of the Bengal Government as early as 1875, and a long correspondence followed'

an account of which is given in annexure No. II It will be seen that the opinion of the then Board of Revenue, concurred in by the Lieutenant-Governor, Sir Richard Temple, was in favour of legislation to give final effect to the rates fixed by the Settlement Officer and to bar the Civil Court from revising his rates, and for some time it was believed that sanction to introduce a law for this object would be conceded. The Government of India, however, eventually, *i.e.*, in the early part of 1877, decided not to allow any change in the law. I am to submit, therefore, with reference to paragraph 4 of the orders of the Government of India of the 27th December 1880, that it seems to have been overlooked that the reason why assessments made by Settlement Officers are subject to review by the Civil Courts in Bengal is because in 1876-77 the Government of India rejected the proposals of the Bengal Government to alter the law.

26. Having failed to obtain sanction to any radical change in the law, the Bengal Government then contented itself with asking for a less ambitious measure, which, while leaving the power of the Civil Court intact, would throw the initiative on the ryot, and compel him to resort to the Court within a limited period of three, subsequently extended to four months. This proposal was sanctioned, and Act III (B. C.) 1878 was in due course passed by the Bengal Legislature. This law, however, left the grounds of enhancement unaltered, as well as the necessity of giving specific and technically precise notice of such grounds to each ryot individually, and it was soon found that the difficulties in the way of establishing the rents assessed by the Settlement Officer on the tenants had not been removed by the new law. The defect in the law is very fully described in Mr. Dampier's minute dated 1st March 1879, an extract from which has been given in paragraph 12 of annexure No. II. The difficulties were found to be so insuperable that Act VIII (B. C.) of 1879 was passed to remedy them. By this Act the general publication in a village of the jamabandi (specifying the details of each ryot's rent and making a reference to the ground of enhancement on which each enhancement was based) was made a sufficient service of the notice of enhancement, thus removing the difficulty which had attended the proof of service of individual notices. The specification in the notice of enhancement of the rent previously paid by each ryot, which was required in order to give effect to an enhancement notice under the rent laws of 1859 and 1869, was also dispensed with, it having been found that in many cases, in dealing with the settlement of private estates, the Settlement Officers could not ascertain the rent previously paid by the ryots to the landlords, especially where, as was common enough, the landlords combined with the tenantry to oppose the enhancement of the demand on the latter, which was to be the basis of the enhancement of the demand of revenue upon the former. The law of 1879 placed the principles of enhancement on a clearer and more workable basis, so far as concerns settlements made by Government officers.

27. This law also declared that the rents recorded by the Settlement Officer as demandable from the occupancy ryots were binding, unless in a civil suit, to be instituted within four months of the publication of the enhanced jamabandis, it was shown that they had not been assessed in accordance with the Act.

28. The hope entertained in some quarters that the ryots would not take the initiative in bringing suits against Government under the new law proved delusive. More than 2,600 suits were brought in Jellamuta and Majnamuta, but technical difficulties having been cleared away by the new law, there has been no impediment, as in other settlements, to a trial on the merits, and the success of Government in this litigation has been very marked. Out of 2,654 suits to set aside the Settlement Officer's rates, 2,391 have already been decided. Of these, 2,202 have been entirely dismissed, while in 189 the confirmation of the enhancement of the rent has been refused only on bastu or homestead land, it having been discovered that the existing law contains no grounds on which the rent of such lands can be enhanced. The reduction of the rents on this account is very insignificant. In accordance with the policy above mentioned, those ryots against whom the enhanced rents recorded as payable

by the Settlement Officer had become final, owing to their not having instituted suits to contest them within four months, were not pressed for payment for several months, so that they might be satisfied by the result of the suits which their brethren had instituted that the rates of rent demanded were not higher than the Courts would have allowed. The effect was that the whole body of ryots withheld payment even of the old amounts of rent which the Collector was willing to accept on account. An arrear of above eight lakhs of rupees had accumulated before compulsory measures were taken to enforce payment. The difficulties are now nearly over so far as the legal rights of Government are concerned, but it may take long before the excitement caused by the litigation is allayed, and the habit of combining to resist payment of rent overcome.

29. The circumstances of the settlement of Selimpore, a large alluvial estate in Pubna, have been as follows:—

In 1874-75 it was measured, and eventually the demand of land revenue was fixed at Rs. 9,365, which amount was confirmed by the Board in February 1877.

The zemindar having refused to accept the settlement, it was taken by the mourasee talookdar under him, Rajah Promotho Nath Roy. The proceedings are chiefly remarkable as illustrating the difficulty which may be experienced in bringing enhancement cases to a decision on the merits. As the settlement was approved of before the Acts of 1878 and 1879 were passed, advantage could not be taken of the facilities afforded by these Acts. The Rajah, having accepted the settlement of the estate and undertaken to pay the enhanced demand of the revenue as assessed, instituted suits against the ryots for recovery of rents at the enhanced amounts recorded as demandable by the Settlement Officer. These suits were thrown out on the ground that no notice of enhancement had been served. Before rent could be collected at the enhanced rate assessed by the Settlement Officer it was necessary to serve a technically precise notice of enhancement on each ryot, and then to institute a suit against him in which the legal validity of the enhancement had to be proved. These difficulties were then forcing themselves into notice, and in view of them the Board agreed to bear the cost of the enhancement notices if the settlement-holder would make a *bonâ fide* attempt legally to establish the enhanced rents against the ryots. He then proceeded, in communication with the Collector, to draw up precise notices as required by the rent law of 1869, and caused them to be served, as that Act requires through the Collector, on about 650 ryots, but in the first 15 suits brought last year to recover the enhanced rents, in accordance with the notices which had been served, the Moonsif has decided that proof of the service of notice is not trustworthy, and the decisions in three of them, which have been appealed, have been confirmed by the Subordinate Judge in March last. Assuming that the decisions are justified by the evidence, or rather by the want of evidence, it illustrates very forcibly the defect of the ordinary law in throwing technical difficulties in the way of the trial of enhancement suits on the merits. For nearly five years the Government in its endeavour to realize the proper amount of public revenue for State purposes, and the proprietor in his endeavour to realize fair rents from which he could pay the same, have been held at bay on mere technical grounds, while in the last instance, looking to the parties on behalf of whom the notices were ordered to be served, there can be little room for moral doubt that 95 per cent. of them must have been duly served. It seems probable, however, that the Munsif is prepared to dismiss any number of suits which may be brought on these 650 notices for want of proof of due service.

The case is still under consideration. The settlement-holder claims under the conditions of his agreement to hold the estate on payment of the former amount of revenue till the enhanced rents payable by the ryots are established. If he can make this claim good he will have to serve fresh notices of enhancement on each ryot; and for two or three years more probably the proposed increase of public revenue will be lost. If he cannot establish this claim he may throw up the settlement. What will then follow will be the type of what is now likely to be the ordinary course of events with regard to every private estate of

any extent which comes under settlement, as already illustrated in the case of Majnamuta and Jellamuta. The proprietors having refused to accept the settlement, the estate will be held under direct management by the Collector, who will again bring the estate under the operation of the existing settlement law; will publish general jumabandis of enhanced rents, and if these are contested by the tenants will defend the suits and endeavour to establish the Settlement Officer's rates in the Civil Courts. Every individual tenant may contest the rates in a separate suit, and years may elapse before the enhanced rents of the tenants are established either by decisions or by voluntary acceptance. During these years the estate must be held under direct management. When the enhanced rents are established the proprietors or the Rajah will probably desire to take possession of the estate; but the Government must take advantage of the provisions of the law regarding recusancy of proprietors, to hold the estate for 12 years if necessary (allowing the proprietors 10 per cent. malikanah allowance only), or for any shorter period until the expenses incurred in establishing the enhanced rents shall have been recouped from the difference between the gross profits of the estate and the amount of land revenue which has been assessed upon it, and for payment of which only the settlement-holder would be liable.

30. The case of the re-settlement of a tenure subordinate to an estate, which tenure was long ago acquired by Government for the maintenance of the stud at Poosah, is an instance of the difficulties which still stand in the way of the Government (in common with all landlords) where no settlement of the revenue proper is in hand, before a decision on the merits on a question of enhancement can be obtained.

The ryots in this case denied their liability to enhancement. The cases were tried before two different Munsifs, one of whom decided that the rents were properly enhanced on the lands newly included in the holdings. He gave decrees to this effect in favour of Government in 715 cases. The other Munsif, holding that the new lands were no more liable to enhancement than the old as by incorporation they became part of the old unenhanceable holding, dismissed the Government claim to enhancement altogether in the 84 cases which he tried. The ryots appealed in 229 cases, the Government in 89; the material object was to get a decision on the point of conflict as to the liability of the newly included lands to enhancement.

Mr. Kirkwood, the Officiating Judge, dismissed all the Government appeals, and decreed the ryots' appeals on the same ground, *viz.*, informality in the wording of the enhancement notice. This decision was given in the month of July 1879. Had the ryots appealed in the remaining 500 cases or so, there is no doubt that they would have succeeded on the same technical ground; as it is, the Collector is ostensibly, though not substantially, in the invidious position of taking advantage of the fact that these ryots did not appeal in order to realize from them rents at rates which he has not been able to establish in the appealed cases. It was then decided that fresh enhancement notices should be issued again on those ryots who had appealed. These notices were prepared by the Government pleader; but in June 1880 it was reported that the Legal Remembrancer had re-cast the form of notice, and the work done by the local officers, in the way of getting ready the forms as prepared by the Government pleader in anticipation of approval, became useless, and so further delay took place. The settlement of the question is still far from completion.

31. Annexure No. III is not entirely relevant to this report, as the main question at issue there is the right of an intermediate talukdar to hold at a fixed rent, a matter which must under all circumstances come before a Civil Court. The narrative is, however, added, as it illustrates very forcibly the vast expense which may be incurred in a settlement, the whole of which may be wasted by the difficulty experienced in getting to a decision on the main point at issue. It has taken nearly nine years to obtain a decision on the merits adverse to Government from the Judge, and if the appeal now pending in the High Court succeeds, an indefinite period may yet elapse before Government will be in a position to obtain a judgment as to what is a

fair and equitable rent, that is, to give legal effect to assessments made so many years ago.

32. The Board submit that these cases illustrate very grave defects in the law regarding enhancement suits, as well as in the law of settlements. However desirable it may be to discourage frequent enhancement of rent, it cannot be denied that when a suit of this kind is brought, it is for the interest of all parties that the technical impediments to a decision on what is a fair rent should be as few as possible, and a law which causes a large proportion of cases to fail because the peons give untrustworthy evidence of service, and another large proportion to fail because the form of notice is pronounced defective, stands self-condemned. The money both of the landlord and tenant, which ought to be devoted to the improvement of agriculture, finds its way into the pockets of vakils and mukhtars, and the relations between the zemindar and ryot are embittered. When the enhancement has been made by an experienced Settlement Officer, the anomaly introduced by Act X of 1859 (as construed by the High Court) was still more glaring; the whole object of his measurement was to revise rent, and yet the formal service of a notice on each ryot was requisite till the new laws of 1878 and 1879 were passed, and even now all the rates determined by an expert, after an investigation made under the most favourable circumstances, are revised by an officer of no agricultural experience, conducting the enquiry under circumstances most unfavourable to a good decision.

33. The following are the remarks of the Famine Commissioners at paragraph 26, Chapter III, section I of the second part of their report:—

"These suits (*i.e.* suits for enhancement of rent) are extremely perplexing in their character; they involve a great deal of minute and laborious enquiry into the soils and current rates of rent, and the decisions of the Courts have often been conflicting. Such circumstances give encouragement to litigation, and leave a feeling of bitterness behind them when the suits are decided. It is to the interest of all parties, and of the State, that litigation of this kind should be discouraged as far as can fairly be done with due regard to the claims of either side."

34. But the objections from a financial point of view are not less noteworthy. The great objection to settlements conducted under the most favourable circumstances is their costliness, so that two to five years of the enhanced rental is absorbed in defraying the expenses of the proceedings. This objection, however, becomes alarmingly forcible in the case of settlements, such as those of Balarampore, chur Selimpore, or Majnamuta and Jellamuta, and as has been explained in paragraph 29 under chur Selimpore, it may be expected that henceforth the course of proceedings therein described must be gone through before the proprietors of any considerable estate will engage for the payment of land revenue at the increased amount assessed by the Settlement Officer. The expenses of litigation are then to be added to those of measurement and assessment, and not merely the expenses incurred by Government and the proposed settlement-holder, but also those incurred by the tenants in contesting the demand. Whatever the issue of the litigation may be it must leave the tenants impoverished, disaffected, and excited, probably entangled in debts from which they cannot extricate themselves, while the gain of Government from the enhanced revenue demandable is almost all anticipated in paying the expenses of the proceedings.

35. It is obvious that although the Settlement Officer has only to determine the amount of revenue, subject to the payment of which the estate under settlement shall be held, he can only determine this by a reference to the gross rental which the cultivators will pay, for it is out of this that the revenue must be paid. Hence, to push the case to an extreme as long as the Civil Court exercises the power of determining the amounts of rent which the ryots on an estate shall pay, it exercises the power of imposing a maximum on the amount of land revenue which the estate shall take from the land.

This power of the Civil Court revising the Settlement Officer's rates remains unaltered by Act VIII (B C.) of 1879, and the question is whether any, and if so, what remedy should be applied.

As far as estates under settlement are concerned, the remedy which lies most on the surface is to assimilate the law in Bengal to that which obtains in the North-Western Provinces. In those provinces, it is understood, if the zemindar on whose estate an increased demand of land revenue has been assessed prefers to settle with his ryots direct, he is at liberty to do so; but if, apprehending difficulty in forcing the rates on which his own revenue is fixed, he applies to the settlement Officer to do so for him, further steps are taken, and a collective suit for enhancement can be brought and decided by the Settlement Officer himself, such decision being as valid as that of a Civil Court in Bengal.

If Settlement Officers were vested with the same power in Bengal, and if the appeal from their decisions lay to the higher revenue authorities, the difficulties which are now experienced in conducting settlements would be almost entirely removed.

Section 75, Act XIX, 1873.

36. It must, however, be recognised that grave objections would attend such a measure in these provinces, arising mainly from the considerations (1) that estates in the Lower Provinces are for the most part permanently settled; (2) that the decision of rent suits has been transferred by Act VIII (B.C.) of 1869 to the Civil Courts.

To bring out these objections, it is necessary to distinguish the different cases in which settlements are made in Bengal, which may be thus classified—

(1)—Settlements of districts which are temporarily settled, such as the frontier districts and the greater part of Orissa or the Darjeeling Terai.

(2)—The settlements of temporarily-settled estates the property of private zemindars situated in permanently-settled districts, such as Majnamuta and Jellamuta. In this class must be included settlements of churs and new formations, which, under section 4, clause 1, Regulation XI, 1825, are accretions to estates, and belong to the proprietors of the mainland estate, subject to the right of Government to assess revenue on the new formation.

(3)—Settlements of Government estates, that is, estates the proprietary right of which belongs to Government. These may be either estates that have been at some previous time permanently settled, as Balarampore, or new island formations under section 4, clause 3, Regulation XI of 1825.

(4)—Settlements of tenures subordinate to estates which have become the property of Government, such as the villages of Malinuggur and Buktearpore, near Poosah, mentioned in paragraph 30.

37. The first and most obvious question that arises is whether the new powers to be conferred on Settlement Officers should apply to all of the above class of settlements, or only to some of them. The importance of this question mainly arises from the very different state of things prevailing in properties not subject to settlement by Government officers, owing to the practical immunity from enhancement which ryots with rights of occupancy enjoy. It is no exaggeration to say that in many parts of Bengal an economic revolution has been silently taking place since the Acts of 1859 and 1869. Large numbers of occupancy tenants are yearly becoming tenants holding at fixed rents by the operation of the section of the law which, unless the contrary can be shown, presumes that a tenant holds at rates fixed for ever if he has paid the same rate for 20 years. If an occupancy ryot can resist enhancement for 20 years he becomes entitled to this presumption, which can rarely be satisfactorily rebutted in an estate which is held under an engagement made at the time of the permanent settlement. Even before the 20 years are over occupancy ryots practically hold at fixed rates, owing to the extreme difficulty which the landlords experience in succeeding in enhancement suits. Hence the classification to which the greater part of agricultural Bengal is tending may be described as—

Firstly, zemindars and persons deriving their title from them, the great bulk of whom are rapidly becoming mere rent-chargers on the land, while (which is equally to be regretted), the higher-handed minority have succeeded

in effectually breaking down all security of tenure and occupancy rights, and rule arbitrarily over a herd of tenants-at-will. In Behar this is much more common than in Bengal.

Secondly, middlemen deriving their title originally from the ryotty right, or who at least succeed in getting it, believed that they do so. These tenants under the various names of haoladars, jotdars, jot-mandals, mandals, chukanidars, aymadars, jangalburi talukdars, chakdars, or mere occupancy ryots have secured the legal position of ryots with a right of occupancy, which, so far as it practically protects them against enhancement, makes them the virtual proprietors of the soil. If they used this immunity to devote themselves to cultivate their lands in security, and to sink money in agriculture, the result, whether contemplated or not, and whether equitable or not, would at least be economically beneficial. But their aim almost invariably is to convert themselves into landlords, and to turn their fixity of tenure into its annual money equivalent, and to get rid of all the risks and responsibilities of cultivation by subletting at a rack-rental.*

* The Famine Commission remark in paragraph 31, Part II of their report—

"The more valuable the occupancy right becomes by reason of such measures of protection as we have advocated, the more need there will then be of guarding against a custom which is everywhere prevalent in India under which the privileged tenant is apt to turn into a middleman, subletting the land and living on the difference between the rack-rent and the privileged rate secured to him by the law. The occupancy right can only be beneficial to the community when enjoyed by a *bonâ fide* cultivator; and the object of the law should be to prevent any one who is not a *bonâ fide* cultivator from acquiring or retaining such rights"

Thirdly, the actual cultivators, who occupying the legal position of sub-ryots to those last mentioned, or of ryots without rights of occupancy under the minority of zemindars above described, are left without any protection, and are rack-rented up to the highest competitive rates. It will be seen from the narrative of the settlement of Balarampore that while these sub-ryots were willing to be recorded by the Settlement Officers as liable to pay any reasonable amount of rent, so as to obtain protection, the aymadars on the other hand, strong in the position of the ryot with a right of occupancy as recognized by law, would only accept the offered settlement on the condition that their sub-ryots were left entirely to their mercy, and the Revenue Officers were obliged to yield to this demand. This is a feature which is constantly recurring in settlements, especially in Eastern Bengal, where the first demand of a haoladar or head ryot, as a condition of accepting the rent proposed, is that he should have entire control ever the rents of his sub-ryots, and that no pretence should be made of giving effect to the rents estimated as fair and demandable from them by the Settlement Officer.

38. The question had assumed such importance in 1876 that it was submitted* to Government, and the then Lieutenant-Governor, Sir Richard Temple, issued orders† to the effect that in the Eastern districts "the right of the haoladar to settle the rents with his cultivators, without interference from the Settlement Officer, must be allowed."

* *Vide* Board's report to Government, No 194A, dated 29th March 1876.

† Government order No. 1150, dated 28th April 1876

The Minute of 26th April 1876 on the subject is appended as Annexure IV to this report.

39. This being the condition to which the relations of landlord, tenant, and sub-tenant are rapidly tending in permanently-settled estates, the enhancement suits in which are under the jurisdiction of the Civil Courts, it becomes difficult, as well as anomalous, to introduce an entirely different system, the effect of which will be to foster and protect the cultivator, while it materially reduces the profits of the middleman, into the small remnant of estates which come under settlement.

How would it be possible to claim such powers, for instance in settlements of the fourth class, where subordinate rights are purchased by Government? The middleman who had successfully defied the vendor to Governments, not because the text of the law was in his favour, but because the practical difficulty of producing the requisite proof was so great, would now find himself stripped of his immunities, and, as in the case of the aymadars of Balarampore, expected

to be content with collection charges of 15 per cent. instead of the 100 to 150 per cent. he was actually enjoying on the rental paid by him.

The same argument applies equally well to the case of settlements of the third class Government estates. The High Court distinctly ruled in the first case quoted in paragraph 6 of this letter, that Government, in making a settlement in these estates, was only in the position of the zemindar; but this doctrine is by no means universally accepted. On the contrary, in the draft Rent Bill now under discussion, the following section occurs :—

"It is hereby declared to be, and to have always been, the law in the territories under the administration of the Lieutenant-Governor of Bengal, that, when the Secretary of State for India in Council acquires an estate by purchase or otherwise, the proprietary interest in the land included in such estate is merged in the permanent title of such Secretary of State and extinguished by the fact of such proprietary interest and such permanent title meeting in the same person."

Assuming this to be law, and the powers of the Settlements Officer to be assimilated to those exercised by him in the North-Western Provinces, the moment the Secretary of State purchases an estate there will be a virtual transfer of property from the middlemen towards the two extremes. Taking Rs. 1,000 as the typical rack-rent of the estate, the whole of this amount, or perhaps even Rs. 1,100, would at the time of purchase be payable by the cultivators to the occupancy middlemen. These would be paying Rs. 400 or Rs. 500 to the zemindar, who might be paying Rs. 300 to Government. The Settlement Officer would perhaps record something like Rs. 900 as demandable from the cultivators by the occupancy middlemen, and Rs. 765 as payable by the middlemen to the Secretary of State, the revolution being due to no change in the substantive law, but solely to the different tribunals charged with the application of it.

40. The same arguments apply with diminished force to settlements of the first and second classes mentioned in paragraph 36 above. If tenants with rights of occupancy in a temporarily-settled estate, or a temporarily-settled district, find that for them enhancement has a real meaning, while to their neighbours it is a dead letter, a sense of discontent and injustice must be the result.

41. The Board therefore would hesitate to recommend the exclusion of the Civil Court from all jurisdiction in settlements if they retain such jurisdiction in enhancement suits in permanently-settled estates. A preferable remedy seems to be that which is proposed in the Bill of the Rent Commission, to re-transfer the determination of rates of rent in all disputes on a large scale between landlords and tenants to the Revenue officers. If this is adopted, then the officer empowered to settle rates might with advantage be at the same time empowered to try all enhancement suits filed within a certain defined period, a special temporary jurisdiction being created as by sections 21 and 22 of the Punjab Courts Act of 1865, and in Bengal by Act XVI of 1869 for the settlement of the Dooars.

42. The remarks of the Famine Commission* on the subject form an appropriate conclusion to this report. They are of opinion that most of the evil attending the general bad effects of enhancement litigation—

*(*Vide* paragraph 26, Chapter III, Section 1 of the second part of their report.)

"Could be avoided by reverting to the original principle under which the rent of privileged tenants could be altered only at the same time as the revenue, and had to be fixed periodically by the same officer who fixed the revenue, so that it should be the duty of the Settlement Officer to assess rent field-by-field (following the practice in Southern India), and then to base his assessment of the revenue on a fixed proportion of the rent-roll. We recommend that this principle should be submitted for the favourable consideration of the Governments of the different provinces concerned. If they consider that it would not be unfair to the landlords, we are of opinion that it would be advantageous to the general well-being of the country, and should to extended to all classes of occupancy tenants, however their rights may have been acquired. If the principle were adopted, the rule for Bengal† should perhaps be that a revision of rents should not take place oftener than every 30 years, although no revision of land revenue is to follow upon it."

† The Commission mean the permanently-settled estates.

Annexure I to Board's Report to Government No. 357½A., dated 3rd June 1881, paragraph 21.

SETTLEMENT OF BALARAMPORE-CUM-BAGBINDA.

THE entire estate of tuppa Balarampore, one of the jungle mehals of Midnapore, became Government property, by purchase, at a sale for arrears of revenue in 1838. Subsequently two of the portions of it, called aymahs Baita and Bagbinda, were separately settled. Baita has not formed the subject of any difficulty, but Bagbinda has been treated in the same manner as the parent estate Balarampore. This estate was first brought under regular settlement in 1844, and after settlement was farmed at an annual jumma of Rs. 3,668 for twenty years. Proceedings for re-settlement began in 1866 and terminated in 1870.

Eventually the Board directed a regular re-settlement to be made in detail, holding-by-holding, by Mr Price, the Settlement Officer, who had been appointed to effect the settlements of the large estates of Majnamuta and Jellamuta in the same district. This detailed settlement of Balarampore was entered upon in November 1873, and was completed by the end of 1874. From 1870 to September 1873 the farm had remained with Messrs. Watson & Co., paying a farming jumma of Rs. 5,555, and it was during this period that the suit was brought by them against Durgamoni Dasi, to enforce the rent fixed by the Settlement Officer in the settlement of 1866-70, which became one of the leading cases on the subject of the powers of Settlement Officers, and is referred to in paragraph 9 of the report to Government, to which this is an annexure. After 1873 the estate was brought under khas management. In January 1875 the completion of the settlement was reported; and the amount of revenue as eventually fixed for the estate Balarampore-*cum*-Bagbinda was Rs. 12,922.

2. As the settlement of Balarampore may be considered the first, as well as the most instructive, of the cases in which the difficulties of the existing law have been illustrated, a detailed account is appended, showing the manner in which the settlement was made and the rates fixed. The following are extracts from the report of the Settlement Officer:—

"I found it necessary to proceed upon two distinct principles in assessing the rents on the lands situated in the formerly farmed portions of the estate, and on those situated in the resumed ayma holdings respectively. The former were well cultivated, and had been so for a long time; a certain uniformity of rates had come down to us from the last settlement, and there were permanently-settled pergunnas lying adjacent, with well cultivated fields, side by side, with the cultivation of the estate, with which a comparison was easy. On the other hand, in the resumed ayma holdings, the greater part of the land was covered with jungle, the soil was poor, water was scarce, and cultivation could with difficulty be carried on without the aid of embankments. If there were any permanently-settled pergunnas adjacent, large belts of jungle intervened; no attempt at uniformity of rates had ever been made; in two villages lying side by side, with soil of apparently equal productiveness, there existed the greatest disparity in the rates; and the rents had not been assessed in the former settlement on the cultivators, but on the ex-aymadars as head resident ryots. The ryots in the resumed aymas have almost to a man given their assent to the rates proposed by me and have signed the jummabandi, though the enhancement in rates over the rates of the previous settlement has been very great, and the jumma has been trebled there; but the ryots of the eastern portion of the estate have not evinced a like readiness, though the enhancement in rates in their case was slight, and the jumma only porportionately increased. Not more than five-eighths of them have signed the jummabandi, and notices under section 13 of Act VIII of 1869 have been served on all the recalcitrants. The principal reason for this unwillingness is the fact that in all previous settlements the assessments were made, holding-by-holding, in the eastern portion of the pergunna; no more influential person than a farmer has ever come between the ryots and the Government, and they are now determined to withhold their assent till they are acquainted with the final intentions of Government towards them. Besides, their rents were lately enhanced—though slightly, yet still enhanced,—that

is, in 1870 by Baboo Ramakhoy Chatterji, and they deprecate a still further enhancement now, though it is perfectly equitable; whereas, in the resumed aymas the jummabandi has never been made in the names of the cultivating ryots, but of the head resident ryots of villages, the ex-aymadars, who did whatever they like to their under-tenants, and ousted them whenever they refused, or proved unable, to pay the rent demanded. To sign the Settlement Officer's jummabandi is to entitle the ryots to demand a potta specifying their rights, and hence they would have given their assent to rates, even in excess of those I have fixed; but I have used my opportunity with great caution, remembering that on a judicious selection depended the stability of my re-settlement, and I have made such assessments as I am firmly convinced can be easily paid by the ryots. I have, moreover, little doubt that when Government sanction is obtained to my assessments, the recalcitrant ryots of the eastern portion will yield. There is no valid reason why they should hold out when the majority of the cultivators of the estate have signed as what I am about to add will show. In the 67 villages which are contained in the resumed aymas, the under-tenants have all signed the jummabandi, with a few exceptions of persons who are away from home, or are detained elsewhere. But the ex-aymadars have only, in the case of eight villages of a total of nineteen, agreed to the proposed rates for their nijjote lands, amounting to bighas 1,248-9-11½, and assessed with Rs. 543-0-5. In the case of 53 villages the ex-aymadars have expressed their willingness to be content with the deduction of 15 per cent. which I have proposed in a later part of this report should be allowed them, and have signed the papers. In two other villages there is no need of signature, as they both bear a peshkash jumma only, which cannot be altered. A third village (Hadisol) has disappeared. So that the ex-aymadars of eleven villages only are still holding out. There are altogether 27 ex-aymadars in the estate, and to show the state of their feelings as regards my selection of rates from another point of view, I may state that 17 of them have signed the jummabandis of all their villages, three have signed the papers of some of their villages, and have left unsigned those connected with the remaining villages; seven ex-aymadars have not come forward at all.

"(*a*) In the eastern portion of the estate are 38 villages, of which one was permanently settled in 1814 A. D., at low rates, another is confirmed revenue-free, two are peshkash lakhiraj, the remaining 34 have come under actual re-settlement. In five of these 34 villages the ryots have not come forward to sign the jummabandi at all. The 34 villages contain 378 khoodkasht ryots, of whom 204 have assented to the rates; there are besides 421 non-resident ryots, who have however acquired rights of occupancy by a holding for twelve years and more; of them, 133 have signed the papers and 288 have not. There are only 33 non-resident ryots, with no special rights; 14 of them have signed the papers, 19 have not.

"(*b*.) The total number of ryots in the eastern portion of the estate is 832, of whom 351 have signed, and the rest have not."

The history of the settlement of Bagbinda is much the same as that of Balarampore, and it is unnecessary to follow it separately.

3. In the settlement of these estates the most important question for decision was the manner in which the head resident ryots, who had ineffectually claimed ayma rights should be treated. Their rights and status are thus defined in the settlement proceedings* :—

Commissioners' No. 468, dated 3rd November 1875.

"The estate (Balarampore) is divided into two portions, called the farmed and the resumed ayma mehals. In the former are found, firstly, khoodkasht or resident ryots, with rights of occupancy; secondly, paikasht or non-resident, with rights of occupancy from a continuous holding for twelve years or more; and thirdly, paikasht or non-resident, without such rights. In the latter are found, (1) ex-aymadars or head resident ryots, and also the three different classes found in the former. There is some distinction between the resident ryots with rights of occupancy in the farmed portions, and the same class of tenants with similar privileges in the resumed aymas; the former have the privilege of cutting down, or of enjoying, the fruits of the trees growing on their lands, while the latter have not this privilege. The ex-aymadars have, according to former usage, the privilege of cutting trees growing on the village of their tenure. The disposal of lapsed or deserted holdings in the resumed aymas is entirely in the hands of the ex-aymadars, who may either amalgamate them with their nijjote, or put in a fresh tenant, to whom the holdings can be let at an increased rental. Such holdings in the farmed portions will be disposed of by the tehsildar appointed by Government. The ex-aymadars are responsible for the rent specified as payable by them in the assessment papers; they will not be deemed entitled to a remission or suspension on any ground whatever, whether for calamities of season, or death, or desertion of ryots. It is in consideration of this condition that 15 per cent. is allowed them from their collections. They can, however, sell or transfer, as heretofore, their so-called aymadari tenures *They can increase the ryots' rent assessed in this settlement, but only with the consent of the cultivators or through the medium of the civil courts.* Unless the ryots commit default in payment of their rents, or are found unwilling to accept the rents assessed by proper authority, they cannot be ejected from their respective holdings."

"They must agree to pay whatever enhanced rent may be assessed in a future re-settlement. If they refuse to accept re-settlement at the increased rent, they will be liable to ejectment from their holdings, which will then be settled with others."

For the clause in italics in the proceedings regarding the aymadars, the Commissioner proposed to substitute that noted on the margin. But under the change suggested, the aymadars were excluded from benefiting from the lands which might be subsequently brought under cultivation, and the Board therefore rendered the clause thus—

"During the term of this settlement the ryots are bound to pay to the ex aymadars only the rents specified as payable by them in the assessment papers.

"During the term of this settlement the ryots are bound to pay to the ex-aymadars only the rents specified as payable by them in the assessment papers, so long as they bring no fresh land into cultivation. For lands brought into cultivation subsequent to the settlement, they will be liable to pay rent at the rates fixed for each class of land in the village at the time of settlement."

The same stipulations were to apply to the tenure-holders and ryots of Bagbinda.

4. The first intimation of difficulty in completing the settlement was brought to notice in November 1876, in the form of a remonstrance from the Collector against entering the new jama in his towjih. That officer thus wrote:—

Commissioner's No. 439, dated 13th November 1876
Board's order No. 431A, dated 20th November 1876.

"I submit that the position is practically this, that the zemindar of Balarampore (Government), wishing to enhance the rent of his zemindari, has employed an experienced and influential person to go over his estate and determine what new rates he might safely demand. Some of the ryots have accepted the rates thus proposed, while others emphatically refuse. All that this officer has done is mere waste paper as regards those who refuse until tested and given effect to by successful enhancement suits.

"I therefore ask permission to bring suits against the ryots who have refused the enhanced rents. Mr. Price* has long since served them with notices.

* The Settlement Officer.

"I would, however, go further, and earnestly urge that it is not fair to the Collector that he should be left to do this work, and the estate returned upon his hands in this condition as if it were re-settled. To do this is to leave the work half undone, and to call upon the Collector to complete it without any extra establishment or machinery for the purpose.

"The estate, I submit, ought not to be abandoned by the settlement officer till he has not merely arbitrarily fixed the rates which he thinks fair, but also obtained acceptance to those rates either by voluntary admission, or by proving their fairness before the ultimate tribunal—the Civil Court. Say, for argument's sake, that Rs. 13,000 is the new jama proposed by the settlement officer and confirmed by the Board. Am I to enter this amount in the towji, and be considered responsible for its collection, if (say) only Rs. 6,000 have been agreed to by those who have to pay, and the tenants for the remaining Rs. 7,000 repudiate that amount and claim to pay as heretofore, the 4,000 paid by them during the former settlement?

"This is substantially the case with Balarampore, and I must submit that the settlement officer ought now to complete his settlement by bringing such test suits as will show whether the Courts will uphold his rates and as will induce all the remaining ryots to accept the rates as finally endorsed by the Court. Perhaps the suits ought to be brought in the name of the Collector; but the essential question is, who is to be responsible for their supervision and for carrying them through the Courts successfully."

The Board, however, ordered the new jama to be entered in the towjih, and suits to be brought to enforce the enhanced rates; but these suits were deferred in consequence of the correspondence then going on concerning a change in the law, an account of which will be found in the narrative of the settlements of Majamuta and Jellamuta.

5. In May† 1877 the Commissioner reported that of the increased jama of Rs. 5,925 over the mofussil jama or ryottee rental of Rs. 6,996 which had been assessed in 1870, only Rs. 2,174 had been accepted. A portion of the admitted enhancement had been realised on the issue of notices, but no steps had yet been taken to enforce the enhanced rates. Among the tenants who had not accepted the new rates, there were many with rights of occupancy, and as they could not be ejected, the only course open seemed to be to sue those on whom notices had been already served, and the Commissioner proposed to institute

† Commissioner's No 185, dated 31st May 1877.

some test-cases to establish the claim of Government. The Commissioner also brought to notice that the Settlement Officer had dispossessed the ex-aymadars who had refused to sign, and had settled direct with their under-ryots, and that one of these ex-aymadars (Dhurma Dassi) had brought a suit to recover possession of her tenure, which, on her refusing to take settlement at the new rates, was settled with the cultivators. The Civil Court held that Government could not dispossess her so long as she pays, or is willing to pay, a fair and equitable rent—the rent previously paid being held as fair and equitable till her obligation to pay a higher rent was lawfully established. As this was all that could be legally asked for, the Commissioner, in consultation with the Legal Remembrancer, determined not to contest the decision.

6. After this decision, some of the other ex-aymadars petitioned the Board and Government against the proceedings of the Settlement Officer in setting them aside and settling their aymas with their under-ryots on their refusing the terms offered. Some also brought suits and regained possession, as in the case noticed above, and others threatened similar suits against Government, and compromises were effected, large amounts having to be paid as mesne profits and for damages done by the under-ryots to the trees and jungle while is possession. The facts will be best understood by perusal of the Board's report* to Government in March 1879, which is placed below—

* Board, to Government, No 185A, dated 21st March 1879

"It will be seen that the decision of the Civil Court is on the question of the precise position held by superior tenants, who originally took the land in a state of waste or semi-reclamation, and have caused it to be reclaimed through the agency of under-tenants, retaining a portion in their own hands for cultivation. It is a question which crops up in all directions; the superior tenants being known in different districts by such names as 'mundals,' 'jotedars,' 'haoladars,' 'noabad talukdars,' and here, locally, as 'aymadars.'

"The progress of matters on this Government estate of Balarampore has been this: Mr. Price, the Settlement Officer, with the approval of the Board, fixed the rents of the under-tenants at rates which the aymadar was prohibited from enhancing during the currency of the settlement, and fixed the aymadars' rent at 15 per cent. below the aggregate of the rents fixed as payable to each by his under-tenants.

"The aymadars, who had been in the habit of receiving from the ryots, rents, probably 100 per cent. higher than what they themselves paid, were dissatisfied. Eight of them refused to accept the rent as determined by the Settlement Officer, who thereupon proceeded to dispossess them, and to make settlements with the under-tenants direct. Some of the aymadars sued, and one (Dhurma Dassi) obtained a decree, declaring that she was a ryot, with a right of occupancy, liable to pay a fair and equitable rent (she had claimed to hold at a fixed rent), but not liable to be ejected for refusal to accept the terms of settlement.

"The Subordinate Judge's decision of 9th March 1877 seems to Mr. Dampier to take a very fair and reasonable view of the position of the aymadars under the existing laws. Dhurma Dassi then claimed compensation for wood cut down, and other damage done to her jote during the period of her dispossession, and this has been amicably arranged and paid, after full local enquiry.

"These questions were looked into by Mr. Dampier when he was at Midnapore last year. As it was evident that the claim of the remaining seven aymadars to restitution was just and could not be resisted, he directed that they be restored to possession of their jotes; and that such compensation as was found to be equitable for loss actually entailed by the dispossession, should be paid to them.

"It now remains to enforce, by due process of law, that portion of the Subordinate Judge's decision which pronounces the aymadars to be liable to pay 'a fair and equitable rent,' as occupancy ryots. The settlement of this estate was confirmed before Bengal Act III of 1878 was passed, and it is not therefore subject to its provisions. Every enhancement must be made by the exact procedure of Bengal Act VIII of 1869, and on one or other of the grounds specified in section 18. And here the revenue authorities are brought face to face with the difficulty which has already been before the Government.

"The Settlement Officer has actually fixed the rates of the cultivating under-tenants at what is considered 'fair and equitable for a cultivating occupancy ryot.

"Is the rent of the aymadar, who is now pronounced to fill the position of occupancy ryot, to be fixed at something lower than 'the fair and equitable rent' of an occupancy ryot? that is, is the Government to give up to him some part of the share which it would be entitled to receive from him if he held the land in his own cultivation, instead of giving it out to under-tenants?

"Or, is the aymadar's rent to be fixed at precisely the same amount as the under-tenant's, ignoring the fact of his having leased it to under-tenants, instead of cultivating it himself?

"Or, is the aymadar's rent to be fixed at the full 'fair and equitable rate of an occupancy ryot,' leaving him to get anything higher that he can out of the under-tenants?

"Mr. Dampier has considered this to be a good case to bring out the theoretical difficulty of the position which is just now of much interest in connection with legislative measures; but he has no doubt that practically an equitable arrangement can be made in these cases after once the Collector has succeeded in framing and serving such enhancement notice as the Courts will accept as being in due form, which is ordinarily no easy matter.

"The so-called aymadars, being admitted to be the jungleboorce ryots, whose exertions reclaimed the land for the proprietor of the estate (now Government) may 'fairly and equitably' be allowed to hold at rents somewhat below those full rates, which may properly be demanded from an ordinary cultivating ryot, and which their under-tenants may fairly be required to pay as occupancy ryots (which under the effect of the Civil Court's decision they will no longer be, as the right of occupancy can attach to one holder only).

"Whatever the advantages which the aymadars enjoyed before this settlement, the Board have decided, several years ago, that an allowance of Rs. 15 per cent. on what they are to receive from their under-tenants is sufficient for them, and the present Board will not re-open this question unless directed to do so. The majority of the aymadars have accepted the settlement on these terms; and it now remains to enhance the rents of the remaining eight by a compulsory process of law, if they will not otherwise come to terms."

Thus it will be seen that, in the first stage of the case, the ex-aymadars gained a complete victory. They recovered possession with mesne profits, and entirely frustrated the endeavours of the Settlement authorities to dispossess them if they refused to accept the terms offered. Indeed, it is not easy to understand how any other result could have been expected to follow their dispossession. Whether they were classed as tenure-holders or as ryots, they certainly were not tenants-at-will liable to summary dispossession for failure to pay enhanced rents when demanded.

7. Simultaneously with the above report, in March 1879, the Board directed the Collector to issue his enhancement notices before June 1879 against any aymadar who might then be found not to have accepted Mr. Price's terms.

8. Then followed some correspondence about forms of pottahs granted to the ex-aymadars and to their under-tenants by the Settlement Officer, by which the former were debarred from enhancing the rents of their under-tenants. The aymadars objected to the pottahs, and notified their intention of suing Government in the Civil Court for declaration of their rights in the mouzahs held by them. The result was that revised pottahs withdrawing the prohibitive clause were ordered to be offered to the aymadars. This, it was hoped, would induce all, or almost all, of them to accept Mr. Price's rents. But if they still refused to come to terms, the Government could sue for enhancement.

Board's No. 408, dated 10th July 1879

9. Upon this, 28 out of 36 aymadars agreed to accept revised pottahs on certain terms—

Commissioner's No. 756, dated 27th September 1879.
Commissioner's No. 991, dated 18th November 1879.

1st.—They desired that the pottahs granted to their under-ryots be cancelled, and that notice be issued to the latter to pay their rent to the aymadars after settling with the latter. This was deemed unobjectionable, and notice, it was said, would be served.

2nd.—They asked for pottahs, conceding rights of occupancy to them, and styling them jungleboorce aymadars. This was agreed to, as their pottahs of 1844 described their holdings as jungleboorce aymas, and under the present kabuliyats they had agreed to future enhancement.

3rd.—They requested that the allowance of 15 per cent. on the aggregate of the rents payable by their under-ryots (which was allowed to them as their profit) be calculated on the gross assets, and not on the balance after deducting patwaris' allowance; that the collection of police peshkush be entrusted to them without any collection charge; that their arrears be realized under Act VII (B.C.) of 1868; and they expressed their willingness to perform putwaris' duties. All these were supported by the local officers, and the Board approved of them and the form of pottahs proposed.

Board's order No. 752A., dated 5th December 1879.

10. Nothing more was heard of the proceedings till May 1880, when the Collector reported that the above 28 aymadars were paying at the enhanced rates. But only 14 had deposited stamps for new pottahs, and the remaining 14 would be called upon to interchange agreements at once.

Commissioner's No. 253, dated 27th May 1880.
Commissioner's No. 585, dated 5th February 1881.

With regard to the eight recusants, suits were pending against four to enforce the enhancement notices served upon them. In two of these cases, Government obtained decrees in full. In one the suit was dismissed, and the tenure declared not liable to be enhanced; an appeal against this decision is still pending. In the fourth the old rent was Rs. 28, the new rent demanded Rs. 144, and the Munsif decreed only Rs. 42. No appeal was lodged against this decision by the advice of the Legal Remembrancer. The status of the other four was different from the rest, for it was a special condition in the settlement of 1844 that if at re-settlement they did not accept the new assessment, settlement should be made with an outsider. Consequently on their recusancy rents were collected khas. But from the subsequent correspondence it appears that one of these four accepted settlement during the quarter ending June 1880; another accepted settlement in the following quarter; the last two had not, up to 5th February 1881, come forward to take settlement. But these are very small aymas, the jamas being Rs. 4-6 and Rs. 6 respectively.

11. To return now to the cultivators paying direct to the landlord (Government): these were left alone till February 1878, when orders were issued to proceed against them. It seemed doubtful if the notices of enhancement previously issued were now valid; and the Collector was therefore directed to issue fresh notices, wherever the validity of those previously issued was doubtful, on all ryots whose rents exceeded Rs. 20, or on any others paying less, if it were thought expedient to do so. The notices were to issue before Joysto 1282 B.S. (June 1878).

12. In February 1878 Mr. Dampier, Member of the Board, visited Midnapore, and recorded a minute, in which he noted that the total jama was Rs. 12,922, and that ryots assessed at Rs. 9,200 had signed Mr. Price's jamabandi, but that 747 ryots, assessed at about Rs. 3,700, had refused to do so. The fact of so many having signed showed that the new rates were not excessive. Mr. Price had issued notices on the recusants as directed, but Mr. Dampier thought that they were not sufficiently explicit as to grounds of enhancement, to satisfy the Courts, and he resolved to give up the enhanced demand from 1283 to 1285 B.S. Revised notices were ordered to be served on the recusants under Bengal Act VIII of 1869 from 1286 (September 1878). The recusants had not paid even at the old rates for those three years, and orders were given to proceed against them at once. But to avoid litigation, special consideration was to be shown in collecting the old rents to those who might agree to accept the new rates from 1286.

13. In reply to the above, the Collector reported that of the 747 ryots who were recalcitrant, notices had now been issued on 539. The remaining 208 ryots were thus classified—

(*a*) 152 were ryots whose former jamas, which ought to be mentioned in the notices, could not be ascertained, owing to their names not appearing in the old settlement records; and it was not known how they acquired their lands.

(*b* & *c*) 49 were cultivators or under-tenants to aymadars, who had been ousted by the Settlement Officers.

(*d*) 7 were those with whom putit lands were newly settled.

As to (*a*), enquiries were set on foot to ascertain their status, and meanwhile, as advised by the Government pleader, notices without specification of previous rates or quantities of land would be issued. As to (*b* & *c*) and (*d*), under the same advice they were to be treated as ryots having no rights of occupancy, as they had come into existence since the present settlement began. Pottahs at the rates fixed were to be tendered to them.

14. Some correspondence followed, and in February 1879 Mr. Dampier issued certain instructions to the Collector from Cuttack, which elicited the fact that of the 152(*a*) ryots on whom imperfect notices were served in Joysto 1285, 41 had come forward and paid the enhanced jama. Of the remaining 111, the former jama of 46 had since been discovered. The former jama of 57 could not be ascertained, and the rest, *viz.*, 8, were the same as class (*d*) ryots, and were to be similarly dealt with. Fresh notices in due form were proposed to be served before June 1879 on the 46 ryots, and as regards the 57 ryots, they were to be served with notices as non-occupancy ryots, in respect of which class the law did not require that the amount of rent previously paid should be specified on the notices. It was expected that the institutions of suits on such notices would make such as claimed occupancy rights come forward and declare the amount of rent which they had previously been paying. On failure of suits on such notices, they were to be treated as occupancy ryots, and notices specifying the former rents as thus elicited served, to take effect from the following year.

As regards the 539 ryots mentioned in paragraph 13 above, 93 had accepted and paid the increased rates. Certificates for arrears were being issued against 49, who, although they had not signed the jamabandi, had paid fully or in part the increased rates for 1283 and 1284, but enhancement suits would have to be instituted against the remaining 397; and the Collector proposed to select ten of the leading men for this purpose.

All these proposals were approved by the Board.

15. In June 1879, reporting how matters stood, the Collector said that all the ryots (except the 710 alluded to in his letter of 3rd March 1879, paragraph 14 above), were paying at the enhanced rates, and that it would appear from that letter that notices were served last year on 691. No notices were necessary on the remaining 49 who were tenants-at-will, and pottahs at the enhanced rates would be tendered to them. Again, in August 1879, the Collector said 318 of the 691 ryots were paying at the enhanced rates—some for two and others for three years past; also that 37 out of the 49 had been so paying for the last two or three years. This left 373 recusant ryots and twelve tenants-at-will, of whom, however, ten had deserted.

16. Up to the end of December 1879, seven more ryots had deserted, and steps were being taken to re-settle the lands of the seventeen deserters at the new rates, and 75 of the 373 recusants had accepted the enhancements. Twelve of the remaining 298 had been sued in September 1879 for enhanced rates from 1286, inclusive of the four aymadars referred to in paragraph 11. But of these, one suit was withdrawn, as it was instituted against the wrong person, and further suit in that case was barred by limitation, and another was dismissed, as the person concerned died before the suit was brought.

Up to the end of March 1880, nine more ryots had accepted the enhanced rates, leaving 289 recusants.

17. Whilst the test-suits were still pending, any action to be taken against the rest on the notices already served had become barred, except in the case of 66 ryots regarding whom there was still time for the institution of suits till the end of 1287 (September 1880); and the Commissioner asked whether suits should be brought against these 66, or whether we should wait the result of the ten* cases now in hand. The Board directed that suits should be brought at once.

* Of these 10 cases, 4 were against aymadars and only 6 against ryots

18. Of the ten cases referred to, the results of four have been already described in paragraph 10, and the remaining six were decided entirely in favour of Government.

19. In regard to the 66 other cases, it appears from the original papers sent up by Commissioner that it was proposed to institute 51 suits. The Legal Remembrancer objected to the manner in which the suits were prepared for institution by the Collector, and withheld his sanction to the measure; but as the time was passing, the Commissioner, on his own authority, after consulting the Collector and Government Pleader, sanctioned the suits being brought at once, especially as they were on the same grounds as the ten test-cases previously

brought. The Legal Remembrancer thereupon reported the irregularity to Government.

20. Eventually only 47 suits were actually instituted, as the jotes of four defendants were transferred to other persons by sale for arrears of rent under the certificate procedure. Of these 47 suits, 43 were decreed in full, with costs and interest. The remaining four were withdrawn, as the parties to the suits accepted the new rent in full. As a proof that his assessment was fair and equitable and light, Mr. Price explained that the defendants in the 43 cases had, after all, voluntarily accepted the enhanced rates by petition to the Civil Court on the day of trial. Thus the Commissioner's divergence from the orders of the Legal Remembrancer terminated most advantageously for Government in this instance.

21. The figures, then, as reported up to date, of ryots against whom the enhanced rents have not yet been established either by express acceptance on their part, or by their having tacitly paid at the enhanced rates, are as follow :—

Number remaining up to Commissioner's No. 1084, dated 22nd December 1880 (paragraph 8 above)	289
Deduct number out of the original ten suits which have been decreed fully in favour of Government (paragraph 18 above) . .	8
	281
Deduct number in which enhanced rates have been enforced, brought without sanction of Legal Remembrancer	47
Total number whose rates have not yet been established any way .	234

Out of these 234, 19 are reported in paragraph 4 of Collector's No. 1505, dated 31st January, to have accepted the enhanced jama voluntarily since the suits were decided; while two have been decided adversely to Government.

22. From a report* since received, it appears that steps are being taken to enforce execution of the decrees obtained against ryots for the enhanced rents of 1286 B. S. The amount due from one of the nine ryots has been already collected, and certificates under Act VII of 1880 have also issued against all the ryots (except two who have appealed from the Munsif's decision) for recovery of rents for 1287 and for part of 1288 B. S.

*Collector's No. 1662G., dated 8th March 1881, enclosed in Commissioner's No. 1400, dated 17th March 1881.

23. The latest reports received show that the result of the test-suits in favour of Government has led to most of the recusants signing the jamabandi in token of their acceptance at enhanced rates, and there now remain only 58 recusants, and confidence is felt that all, or almost all, will yield eventually. It is also reported that of the jama of Rs. 12,922 referred to in paragraph 13—

Rs.	
11,635	have been accepted.
805	have been decreed by the Courts as enhanced rents.
119	have been disallowed by the Courts.
363	are still disputed.
12,922	

25. It may therefore fairly be hoped that the work of finally establishing the rents which were assessed at the settlement proceedings, which terminated in 1875, will be completed in this year, 1881.

H. L. HARRISON,

The 13th April 1881. *Secy. to the Board of Revenue, L. P.*

(Annexure II to Board's report to Government, No. 357½A, dated 3rd June 1881, paragraph 25.)

SETTLEMENT OF JELLAMUTA AND MAJNAMUTA.

THESE two estates are large properties in Hijli, the zemindars of which refused to accept settlement at the time of the Permanent Settlement in consequence of their exposure to damage from cyclone-waves and salt-water. They have never been permanently settled; but much money has been spent during the present century on the protection of the country by embankments. The previous settlement of thirty years having expired, Mr. Price, the Settlement Officer, entered upon their re-settlement in January 1870, after completing the measurement and assessment of Balarampore described in the first of these annexures. The work was concluded some time in 1877-78. It was proposed, in consequence of the great rise in the value of produce, and of the increase of cultivation since the preceding settlement was made above 30 years before, to raise the Government revenue of Jellamuta from Rs. 93,127 to Rs. 1,65,917, and of Majnamuta from Rs. 1,12,348 to Rs 1,85,462.

2. The first indication of a desire to appeal to the civil courts was manifested as early as 1875 while assessment was going on, and the ryots were being called upon to accept the new jamabandi. In a report on the progress of the settlement which was submitted by the Commissioner, Mr. Buckland, in his No. 756A, dated 3rd March 1876, there occurs the following passage:—

Vide paragraph 2 of Board's order No. 382A, dated 12th August 1875

Printed copy with Board's No. 214A, dated 4th April 1876, to Government.

"Generally speaking the two estates, Jellamuta and Majnamuta, were lightly assessed at the time of the former settlement, and the increase now proposed is not larger than should be obtained at the present re-settlement after the lapse of a period of more than 30 years. But though the general incidence of the increase of the rates is very moderate, the ryots will not agree to them, except in the case of a few mouzahs, where the proposed increase over the old rates is not large. Mr. Price states that it is not likely that the majority of the ryots can be induced to come to terms unless the enhancement is brought down to an anna or two per beegha over the old rates. The ryots seem to have no real cause of complaint, but they are evidently under the impression that *the Settlement Officer cannot demand any increase at all at a re-settlement, and that no jamabandi is binding on them to which they do not give their consent.* Generally, the objections of the ryots have been urged orally. Only one or two written petitions have been presented to the Settlement Officer, in which the ryots urged that the productiveness of the soil of the land has deteriorated; that they had reclaimed the land; and that a demand for enhancement of rent cannot be made in a country liable to cyclones and storm-waves. They also allege that the neighbouring rates will not apply, as the land in the neighbouring pergunnahs are more productive, being less impregnated with salt and much better protected. They assert that the rates current in some of the adjacent pergunnahs are actually lower than the existing rates for their lands; that the staple produce of the unsettled pergunnahs is only rice; and that, after paying the present rents, they can manage to live and no more. The object of the present report by Mr. Price is to show in detail the insufficiency of these objections as put forth by the ryots, *and to provide evidence hereafter in case it is necessary to have recourse to the civil courts to sue for enhancement of rents,* in which case the civil courts ought to be bound under the provisions of Regulation VII of 1822, to decree the rents according to the evidence taken by the Settlement Officer."

3. This appears to have been the first occasion on which the question of the effect of a Settlement Officer's finding of rates was formally raised, and it elicited the following orders from Government, addressed to the Board of Revenue:—

Government order No. 1204, dated 4th May 1876.

"This remark opens a question of great interest and importance, upon which I am directed to request that the Lieutenant-Governor may be favoured with a carefully considered opinion from the Member in charge, both as to the exact state of the existing law upon the subject, and as to the necessity of introducing any amendment of it.

"It is not quite clear, from the wording of the paragraph in the Commissioner's letter, whether Mr. Buckland considered that, under the law as it stands, it is the duty of the civil courts to give a decree for rent at the rates fixed by the Settlement Officer, or whether he merely means that the evidence taken by the Settlement Officer will afford a fair ground for the institution of enhancement suits; but that it is possible that the courts will set aside this evidence and give decrees at lower rates. The Lieutenant-Governor does not understand that by using the words 'ought to be bound,' Mr. Buckland desires to recommend any change in the law, but that he means that this may be expected to be the interpretation which the courts will put upon the provisions of Regulation VII of 1822.

"But, even if it may be assumed that the evidence taken by the Settlement Officer will guide the courts in passing judgment in enhancement suits, it still appears open to doubt how far it is desirable that such questions should come under the cognizance of the courts at all, and whether it would not be better to allow them to be finally determined by the Settlement Officer, subject to the revision of the superior revenue authorities. The Lieutenant-Governor observes that the law in the North-Western Provinces (Act XIX of 1873) distinctly provides that the determination of the class of a tenant, and of the rent payable by him, shall rest with the Settlement Officer, and that no civil court shall exercise jurisdiction in the matter. I am to invite an expression of opinion of the Member in charge upon the

point, whether it would not be advisable that a similar provision should be introduced in the law in Bengal."

Board to Government No. 314A, dated 23rd May 1876.

6. The Board (Mr Schalch) replied as follows:—

"In reply, I am to explain that the practice under the present law is as described in clause 7, section 6, Chapter XX, page 280 of Board's Rules quoted on the margin. This rule was founded on a decision of the High Court of 18th June 1866 in the case of the Nawab Nazim of Bengal *versus* Ramlall Ghose (*vide Weekly Reporter*, Vol. VI, page 5,—rulings under Act X of 1859).

"Where an enhanced rent has been imposed in the course of settlement, the names of all ryots who have not recorded their assent to the same on the jamabundi should be specified in the settlement proceedings, with a view to the proprietor or farmer, who may enter into engagements, serving the necessary notice on them under section 13, Act X of 1859.

"The effect of the decision of the High Court is that although the rate may have been fixed by the Settlement Officer after the fullest enquiry, it cannot be enforced until after the issue of the notice under section 13, Act X of 1859, [now section 14 of Act VIII (B.C.) of 1869] on which the civil courts apparently consider themselves entitled to raise the question of the correctness of the rates assessed by the Settlement Officer. A case also occurred in 1872, in which, after the settlement had been made at enhanced rates and accepted by the zemindar, the ryots refused to pay him the enhanced rate fixed by the Settlement Officer; and on their contesting the demand in the Moonsif's court, the Moonsif dismissed the zemindar's suits with the following observations:—'The plaintiffs could not show that the defendants ever agreed to pay this enhanced rent. They admit that the defendants did not pay rent at that rate, so that the simple question is whether the defendants are bound by the jamabandi prepared by Government officers previous to the Permanent Settlement with the plaintiffs, which formed the basis of that settlement * * * . I hold that that the plaintiffs cannot recover rent on the basis of a new jamabandi alleged by them.

"It appears to the Member in charge that this action of the civil court is opposed to the spirit, at all events, of Regulation VII of 1822, and that the court should have no power to interfere with the assessment fixed by the Settlement Officer, who has the better means of determining that question. Mr. Schalch is therefore strongly in favour of amending the law, and of assimilating it to that obtaining in the North-Western Provinces under Act XIX of 1873.

"A Settlement Officer, enquiring on the spot into the rates of rent payable in any estate under settlement, is in a far better position than any civil court can be to ascertain and determine those rates with fairness to all parties. To allow Settlement Officers in Bengal a power similar to that exercised by such officers in the North-Western Provinces would, in Mr. Schalch's opinion, be an amendment of the law which would undoubtly be attended with great advantage."

5. It is believed by the Board that the Bengal Government supported thit proposal, and during the remainder, of the year 1876, and in the first part oe 1877, an impression prevailed that an Act would be introduced to give final effecf to the Settlement Officer's decisions. As no orders, however, were received, ths Officiating Commissioner, Mr. H. A. Cockerell, again reported that matters were *in statu quo* both in Balarampore and in Majnamuta and Jellamuta. As regards these last settlements he thus wrote—

"The proceedings in connection with these settlements in Midnapore have been in progress for the last 5½ years, and have cost the Government, according to an estimate given by Mr. Price in one of his letters, over five lakhs of rupees. The increase of revenue which will result from these proceedings is estimated by the Settlement Officer at 70 per cent. For the purpose of the present letter, it is unnecessary to consider whether Mr. Price's anticipations will be fully realized or not. Even if the gain to the exchequer does not reach the full amount of his estimate, there can be no doubt that there will, under the new settlements, be a very considerable increase of revenue, amply sufficient, if realized, to recoup Government for the very heavy expenditure it has incurred; but whereas in former years all difficulties in connection with a settlement were pretty well over by the time the Settlement Officer submitted his report, in the existing state of the law we are merely on the threshold of our difficulties.

"There is, it is stated, very little probability of the ryots of these pergunnahs accepting the enhanced rates proposed under the new settlement, and consenting to sign the jamabandi and accept pottahs. Indeed, as regards one of the estates, Jellamuta, Mr. Price has reported officially that such is the case. In the face of such a state of affairs, there is not the least expectation that the proprietors of the estates will accept the settlement and enter into any engagement with Government. They are entitled to malikana, which they can draw with as great regularity as if their money was invested in Government securities, whilst they leave to Government the expense and trouble of fighting the battle with their ryots. The only course left open to Government, to enable it to reap the advantage of the new settlement proceedings, is to proceed, under the provisions of Act VIII (B.C.) of 1869, to serve notices of enhancement throughout these enormous pergunnahs, and then, as soon as a kist has fallen due, to sue for the arrears at the enhanced rate before the nearest Moonsif. With this officer, notwithstanding the laborious and detailed enquiries of Mr. Price and his staff, extending over several years, it will rest to decide what is a fair and equitable rent. His decision, if not accepted by both sides, will be carried to the Appellate Court; and it is not an exaggerated estimate to assume that 18 months or two years will elapse after the conclusion of the settlement proceedings before the rates of rent are finally settled.*

* Four more years have elapsed since this was written, and the suits are only now being decided in the Court of First Instance.

"Such litigation as we have the prospect of cannot be carried out without creating a widespread feeling of uneasiness and discontent, and stirring up feelings of irritation between landlord and tenant which it will take years to allay. I would therefore beg the Board of Revenue to take the question into their very earnest consideration, with a view of seeing whether any steps cannot be taken to avoid the necessity of these ulterior proceedings.

"If the opinion of His Honour the Lieutenant-Governor is in favour of such a measure as that proposed by Sir Richard Temple, it would, in my opinion, be worth while to defer the conclusion of the settlements, and even to incur some extra present expense in the retention of Mr Price and a portion of the settlement establishment until such a measure can be passed, rather than incur the delay and irritation to which a general resort to measures of enhancement must give rise.

"Of the propriety of passing some such measure, there cannot, I think, be two opinions. I would submit that it was never contemplated on the termination of a settlement in a temporarily-settled estate after detailed and elaborate enquiry made by experienced revenue officers with a view to the settlement of rates, that their decision should have no finality, but that Government should be bound to commence, as it were *de novo*, and serve notices of enhancement on every ryot, and then fight each case through every civil court, from the Moonsif upwards."

Board to Government, No. 520A, dated 12th June 1877.

6. The Board supported the Commissioner in their letter of the 12th June pressing for early orders.

Government order No. 1623, dated 7th June 1877.

7. While this was under issue, Government replied to Board's report of May 1876, informing them that—

"His Excellency in Council considers it inexpedient at present to amend the law relating to the powers of Settlement Officers,"

and asking what course the Board proposed to take in respect of the rates of rent fixed by the Settlement Officer for the estates now under settlement in Midnapore.

Legal Remembrancer's No. 850, dated 16th August 1877.

8. Copy of this was sent to Commissioner for report. But before he replied, the Legal Remembrancer addressed the Board, reporting the decision of the First Moonsif of Midnapore in a case in which it was held that a Settlement Officer could not enhance, except under section 14, Act VIII (B C.) of 1869. The Legal Remembrancer thought it fairly open to argument whether Act X of 1859 was in any way intended to repeal, alter, or modify Regulation VII of 1822, and he suggested that a case should be brought up in appeal to the High Court. Some correspondence on this point followed between the Board, the Commissioner, and the Legal Remembrancer, which resulted in the Board adopting the above view, and deciding that the legal difficulties, if any, should be cleared up by taking a case into the High Court. They desired the Legal Remembrancer to arrange for carrying this out.

Board to Government, No 843A, dated 1st October 1877.

9. The Board then laid the case before Government in the following terms:—

"In a case recently decided by a Moonsif of Midnapore, the question having been raised whether the proceedings of a Settlement Officer enhancing the rents of a ryot were binding upon such ryot if he had not signed the jamabandi, it was decided that a Settlement Officer cannot enhance rents except in accordance with the provisions of Act VIII (B.C.) of 1869, section 14. This decision, it appears, was based on precedents of the High Court.*

"When reporting the case for the Board's instructions, the Legal Remembrancer seemed to think that it was fairly open to argument whether Act X of 1859 was in any way intended to repeal, alter, or modify Regulation VII of 1822, and he therefore gave it as his opinion that a case should be taken in appeal to the High Court.

"On looking closely into the matter, it appeared that the difficulty of enforcing a settlement rate is of long standing. It was felt so far back as 1850, in which year the then Board issued certain instructions on the subject. Mr. Ravenshaw, however, was clearly of opinion that the provisions of Regulation VII of 1822, and the whole tenour of the old Regulation with respect to the powers of officers engaged in making settlements, have not been repealed or interfered with by subsequent rent laws—Act X of 1859 or Act VIII (B.C.) of 1869—which merely regulate the collection of rents. This being the case, and looking to section 9 of Regulation VII of 1822, which declares that 'all decisions on the demands of zemindars shall hereafter be regulated by the rates of rent and the modes of payment ordered and ascertained at the settlement, and recorded in the Collector's proceedings until distinctly altered by mutual agreement after full investigation in a regular suit,' and to clause 3 of section 14, in which it is said that 'nothing therein contained shall be understood to authorize any court to interfere with the decision of the revenue authorities relative to the *jama to be assessed* on any mehal,' it seemed evident that civil courts have no power to interfere with the assessment of an officer making settlement, except in a regular suit which must be instituted by the ryot, and in which he must show that the assessment is incorrect, the onus of proof resting on the ryot.

* *Vide* cases collected at Bell's *Landlord and Tenant*, page 39; and also a case in 21, *Weekly Reporter*, page 410.

"In this view of the law, in which the Officiating Commissioner of Burdwan agrees, the Board have directed the Legal Remembrancer, in consultation with the Commissioner, to select a case and take it in special appeal to the High Court to get the legal difficulties, if any there be, cleared up."

10. The Lieutenant-Governor in reply said he would await the result of the appeal. If successful, no amendment of the law would be necessary. But from previous examples before him, the Lieutenant-Governor felt no confidence that the decision would sustain the Board's view of the present law. The Lieutenant-Governor had already come to the conclusion that some amendment of the existing law was necessary, and he therefore forwarded, for the Board's information, copy of a letter addressed to the Government of India on the 6th August (No. 2115), in which it was proposed to introduce a short Bill, the effect of which would be to leave the jurisdiction of the civil court intact, but to throw the initiative of going into Court on the ryot.

Government order No. 2783, dated 24th October 1877.

11. Very shortly afterwards Government informed the Board that the introduction of a Bill of the kind advocated to define the powers of Settlement Officers in respect to enhancement had been sanctioned by the Government of India.

Government order No. 2926, dated 8th November 1877.

12 The idea of carrying a test case into the High Court was then abandoned, the more readily, as there was more and more a concurrence of opinion that there would be no chance of success, and shortly afterwards measures were taken in Council which eventuated in the passing of Bengal Act III of 1878—a measure, the chief feature of which was that the Settlement Officer's enhancements would be deemed correct, unless the contrary was proved by the tenant in a suit to be brought within three months of the receipt of a notice to attend and sign the jamabandi. Such notice was to be regarded as equivalent to an enhancement notice. Section 5, however, required that the increase to the rent should be clearly shown in the jamabandi, together with a statement of the grounds of enhancement, and as the specification of the increase to the rent involved a knowledge of the details of the existing rent, a difficulty was experienced in working under this Act, which is explained in the following extract from a minute recorded by Mr. Dampier on the 1st March 1879, who had then taken his seat at the Board, requesting the Lieutenant-Governor's permission to introduce an amending Act:—

"I am obliged to submit, for the consideration of His Honor the Lieutenant-Governor, the difficulties which have been experienced in connection with the enhancement of ryot's rents in the Majnamuta estate, on which depends the increase of revenue which was expected to result from the recent re-settlement.

"Precisely the same difficulty will be encountered, but in a greater degree, in the case of Jellamuta, of which it is expected that the proprietors will refuse to accept the settlement until the enhanced ryots' rents, on which the amount of Government revenue demand has been based, have been established.

"As regards Majnamuta, the Lieutenant-Governor is aware that this estate has been under attachment for the last four years. The Government stands in the place of the zemindars. The last measurement and settlement of the estate for the assessment of the land revenue was made about 35 years ago, when the zemindar was in possession of the estate. The record of holdings and rents payable by the ryots as they stood at that time exists; but during the long interval which has elapsed, the identity of the holdings has been generally destroyed. From time to time the zemindar has made new arrangements with the individual ryots, but such arrangements have been on the basis of the rents at the rates which were found to prevail at the time of the last settlement. There has been no attempt at general enhancement. When the estate came under the Collector's management four years ago, the rent-roll was found to be within one per cent. of the amount at which it was fixed at the last settlement. Since then the Collector has gone on collecting at the same rates. Meanwhile the estate has been carefully re-measured in the course of the proceedings under Regulation VII of 1822, and the area of land now held by each ryot has been ascertained and recorded, as well as all other particulars as to the quality of the land, &c.

"It is found that the area under cultivation has increased by nearly 20 per cent. since the last measurement and settlement was made, and that the value of produce has risen by at least 70 per cent., without taking into the calculation the rapid and, perhaps, only temporary increase of the last two or three years.

"It is evident, therefore, the zemindar is entitled to much higher rents from the occupancy ryots as a body than those which are now paid, calculated at the rates which were prevalent 35 years ago.

"The majority of ryots on the estate are believed to have occupancy rights. Before the enhanced rents recorded in the present settlement proceedings can be deemed, under section 3, Bengal Act III of 1878, 'to have been correctly enhanced until the contrary is proved,' it is necessary that a notice of enhancement shall be served on each ryot, or a jamabandi published under section 4; and section 5 requires that the grounds of the enhancement shall be specified in any such notice or jamabandi.

"Section 2 further requires that the grounds of enhancement must be one or more of those specified in section 18, Bengal Act VIII of 1868. Where the ground of enhancement under that section is a rise in the value of produce, the decisions of the civil courts show that they will require a specific comparison to be made, on the one hand, between the rates on which the proposed enhanced rent is calculated, and the value of the produce at the time being, and, on the other, between the rates on which the rent previously paid was calculated and the value of the produce at the time when the rent of the holding was last adjusted, or at some other period during the tenancy of the ryot.*

"It so happens, however, that the Collector has been unable to obtain from the zemindars of Majnamuta anything like complete papers from which it can be shown in what year, or on what area (and therefore on what rates), the existing arrangement as to rent was made with each separate ryot, such arrangement having been made, and the holding itself created, in the great majority of cases, if not in all, at some time after the last general settlement of the estate, the records of which therefore contain no mention of it.

"Clearly, to allege that the value of produce has risen 70 per cent. since the last settlement will be no sufficient ground of enhancement against a ryot whose holding had not then been created.

"The Collector must allege, and, if necessary, prove in each case what the rise in value has been since the year in which the individual ryot's holding was created or his rent last adjusted, or in some subsequent years. But he has no means of discovering in what year the tenure originated. The comparison cannot therefore be made with that year. As he admits the right of occupancy, the courts would, perhaps, allow him to take a period of from 13 to 16 years ago for the purposes of his comparison. But such a comparison would not justify such an enhancement as is equitable and fair; for although the holding did not exist, and therefore the rent could not have been adjusted at the last settlement, it is a matter of notoriety that the rent, though fixed 15 or 20 years later, was calculated at the rates which were adopted at that settlement, *i.e.*, (as the rise in the value of produce has been gradual, although more rapid of late years) the rent when fixed was calculated at rates which bore a far smaller proportion to the then prevailing value of produce than the rates on which rents were calculated at the last settlement bore to the value of produce which ruled at that time.

"Although the value of produce is proved to have risen 70 per cent. during the last 35 years, since the *rates* were fixed on which the ryots' rents are known to be calculated, the rise during the last 13 to 16 years, which the Collector must take for his comparison, will have been much less, and therefore the comparison would not justify any sufficient enhancement. Moreover, in many cases probably the ryots now hold much more land than they held formerly, but of this again the Collector can give no proofs. Again, although the value of produce which prevailed at the time of the settlement is recorded in the settlement papers, it is no easy matter for the Collector to prove what was the ruling value at any subsequent time more than 12 years ago.

"An illustration will show the unsatisfactory working of the law as it now stands construed—

"The settlement of an estate took place 30 years ago, when the value of produce was ascertained to be x.

"A, a ryot, then had his rent fixed at, say, $\frac{x}{4}$ according to the settlement rates.

"B, another ryot, came on to the estate 15 years ago, and took a precisely similar holding. By this time the value of produce had risen to $2x$; but as the zemindar had never thought of increasing his rates, and had continued to make his arrangements, on the rates of the previous settlement, B's rent, too, was fixed at $\frac{x}{4}$.

"Fifteen years later the temporary settlement of the estate expires, the demand of land revenue is raised, and the zemindar naturally wishes to enhance the rents of his ryots.

"The present value of produce is $4x$, so he can quadruple the rent of A, who has held his land for 30 years, and raise it from $\frac{x}{4}$ to x. Not so, however, with the rent of B, who has only held his land 15 years: that can only be doubled, and so raised from $\frac{x}{4}$ to $\frac{x}{2}$. This result is in direct opposition to the whole spirit of the rent laws, which is to recognize the more favourable position of the old ryot over one of less standing.

"In connection with the settlement of Majnamuta, every effort has been made to overcome the difficulties of the position, but without avail."

13. The Act thus introduced became Act VIII (B.C.) of 1879,—an Act somewhat more comprehensive than the Act it replaced, and which is still in force. The Settlement Officer was less fettered in his grounds of enhancement, but the period within which a suit might be brought to set aside his decision as to the rent demandable was extended to four months.

14. The work of enforcing the settlements in Jellamuta and Majnamuta then commenced in the latter part of 1879. Up to December 1879 more than half of the Majnamuta ryots accepted the new rates and signed the assessment papers. Soon afterwards, however, the ryots of both estates combined to resist the enhancement, and served notices, under section 424 of Act X of 1877,

* In the celebrated case of Thakoorance Dassee (III W. R. 29), decided on the 19th June 1865, Mr. Justice Macpherson while concurring with Mr. Justice Trevor on the principle that the enhanced rent should bear to the present value of the produce the same proportion as the old rent bore to the value of produce at the time taken for comparison, wrote in his judgment—

"Let the zemindar go back to any year he chooses; let him go back to the last adjustment if he can; if not, to any year which he thinks will suit his purpose.

of their intention to sue Government to set aside the Settlement Officer's award. Some of the ryots of Majnamuta, who had already accepted pottahs at the enhanced rates, joined the rest, and served notices under the same Act. It also appears that all the ryots of this class withheld payment of their rent, even at the old rates.

15. The ryots of both estates commenced instituting suits against Government early in 1880. There are in round numbers about 75,000 ryots upon the two estates. Of these, over 2,600 brought suits within the period allowed by law. The progress of the disposal of the suits up to 5th* March 1881 is shown below :—

* The figures have since been corrected up to 15th May 1881.

Estate.	Total number of suits instituted.	Disposed of			Remaining.
		Dismissed or withdrawn.	Partially decreed	Total.	
Majnamuta . .	1,143	766	131	897	246
Jellamuta . .	1,511	1,436	58	1,494	17
Total .	2,654	2,202	189	2,391	263

16. Thus the Government, as defendant, has fully gained 2,202 cases, and partially gained 189. Not one case has been fully decreed in favour of the ryots. In the suits against Government that were partially successful, the enhanced rates on homestead lands only were disallowed by the court at Contai, on the ground that the law contains no grounds whatever on which the rent of homestead lands can be enhanced; the reductions of rent have been very inconsiderable.

17. It has been determined to rest satisfied with the court's decision in the cases disposed of, and not to appeal against any decisions which do not involve a substantial reduction of the assessment in any pergunnah.

Board's order No. 175A, dated 16th March 1881.

18. The effect of the endeavour to levy enhanced rent from the ryots is well illustrated by the statistics of the collections in Majnamuta during the years 1875-76 to 1880-81, during the whole of which time it was under khas management at the request of the proprietors. During the first three years the current demand was approximately Rs. 1,82,000, that being the rent-roll fixed at the previous settlement, which had undergone scarcely any change during the interval of more than 30 years. The collections, it will be seen, on the average exceeded the demand, as there were considerable arrears at the time when the estate was taken under khas management, which were gradually collected during such management. In 1879-80 endeavours were made for the first time to collect the enhanced demand, about Rs. 2,70,000, with the result that the collections fell at once by a lakh of rupees.

	Majnamuta collections. Rs.
1875-76	1,97,641
1876-77	1,82,693
1877-78	2,07,425
1878-79	1,79,923
1879-80	76,319
1880-81, to December, nine months	32,083

19. The policy throughout towards the ryots has been most considerate. In the hope that the suits which had been instituted would be speedily disposed of, and that the result would satisfy the great body of ryots (whose assessments had become final) that the enhancements were fair and such as could be justified in the courts, no attempt was made to enforce payment of rents by compulsory process for many months. The ryots met this indulgence, as is usual, by a refusal to pay in any rents at all, even at the old admitted amounts. Up to last December the balances from Majnamuta and Jellamutta had accumulated to about eight lakhs of rupees. Active measures were then taken for their realization under the orders of Government, and since then about two lakhs have been collected.

H. L. HARRISON,
Secretary to the Board of Revenue

The 13th April 1881.

(Annexure III to the Board's Report to Government, No. 357½A, dated 3rd June 1881, paragraph 31.)

SETTLEMENT OF TALUK TRAN NATH HURSO NATH IN NOAKHOLLY.

This is a miyadi shikmi taluk, which was settled as such for 30 years, terminating in 1870 (1277 B.S.), at a rental of Rs. 1,881. It was in that settlement included in the parent estate Chur Durvesh, to the farmers of which the shikmi talukdar paid his rent, the farmers receiving an allowance of 10 per cent. on the rental.

On the expiration of the 30 years' settlement in 1871, the estate was re-measured. The following was the result of that measurement:—

	B.	C.	C.
Cultivated	1,099	13	15
Culturable	2,647	10	2
Unculturable	100	17	14
TOTAL .	3,848	1	15

In June 1872 a notice was issued by the Settlement Officer, calling upon the under-tenure-holders, as well as other ryots, to come in and settle for their lands at the prevailing rates, which were fixed by the measurement at twelve annas a bigha for haoladars, and one rupee for koodkast jotedars. The talukdars were allowed 25 per cent. on the enhanced rents recorded as demandable by them, for collection expenses and profit, instead of their former allowance for matan and oil, amounting to 22½ per cent. To this arrangement the talukdars declined to agree, and filed a petition to that effect on 10th June 1872. The tenure was, on their refusal to engage, held khas, and let out for one year only to the ryots at the jotedari rates. Against this order an appeal was preferred to the Commissioner, which was dismissed on 2nd September 1872.

Radha Prosad Wasti and others, the shikmi talukdars, then brought a possessory suit in the Civil Court under Section 15, Act XIV of 1859, to recover possession of the under-tenure, and obtained a decree.

After consulting the Legal Remembrancer, the member in charge requested the Commissioner to instruct the Collector to issue notice of enhancement on the talukdars under Section 14 of Act VIII (B.C.) of 1869. It was further observed—"the increased rent will not, the member in charge thinks, become an arrear of revenue until the under-tenants have accepted the enhancement." Eventually the Board wrote as follows:—

Board's order No. 265A, dated 5th November 1875.

"The case now stands thus: The plaintiff obtained a decree for possession under Section 15, Act XIV of 1859, as against Government. He has also in the lower court obtained decrees ousting certain ryots who were settled on the land by Government. In these suits Government was made a co-defendant. The suits have been appealed, but, under the advice of the Legal Remembrancer, the member in charge has determined, as you have been already informed, not to defend the cases, provided the Appellate Court declares that the question decided is solely that of possession, and that the question of the right of the plaintiff is left for future determination." This was said because the Munsiff in his decision had used language indicating that he held that the shikmi talukdar was not liable to enhancement; but as this was not the point in issue, it was supposed that it would be treated as any *obiter dictum*.

"The member in charge has deliberately abstained from bringing a suit to establish the title of Government to the tenure, and has instead directed that regular proceedings be taken under Regulation VII of 1882 for a proper re-settlement, intending to throw on Radha Prosad Wasti the *onus* of proving his right to hold at a fixed rate.

"It appears to the member in charge to be a necessary incident of this course that Government shall allow the possession of plaintiff, as decreed to him under Section 15, Act XIV of 1859, to stand good till the completion of a regular re-settlement. But if this be so, it obviously follows that Government must account for mesne profits during the time of dispossession."

Under these instructions the jamabandi and other papers were prepared in 1876, and the tenure-holders offered the settlement with a deduction of 20 per cent. They refused, when a formal notice of enhancement was issued and served before the end of Pous 1282, B.S., (middle of January 1876), to take effect from 1288, B.S. The enhanced rates were fair, being less than the rates at which the cultivators were paying, and were the same as those which ordinary neighbouring occupancy ryots were known to have paid. The enhanced rent for 1283, B.S., was Rs. 3,248-15-7.

Paragraph 43 of first Note.

After issue of notice the talukdars objected, claiming to hold at a permanent rate of Rs. 3 per kani, as fixed at the previous settlement. The permanency of the former rate was found by the Munsif, but on appeal the Second Subordinate Judge of Tipperah overruled that finding.

At this juncture the settlement papers were destroyed by fire, and enquiries regarding enhancement from 1286, B.S., had to be gone over a fresh, the result of which was reported* in February 1879.

Commissioner's No. 836NC, dated 4th February 1879.

The lands of the tenure are now classified thus :—

	B.	C.	C.
(1)—Uncultivable roads, tanks, &c. . . .	207	2	12
(2)—Cultivable laikabadi, muling charal, waste and jungles, degi-churs and fallow . . .	1,244	2	13
(3)—Hasila, three classes—			
(a)—Homesteads (b)—Vegetable fields (c)—Grass fields (d)—Cultivated fields	2,240	0	14
TOTAL .	3,691	6	7

The former area was 3,843-4-15 beeghas. The difference as now shown is the result of diluvion. Further loss from this cause is expected to take place.

The Collector then raised a question as to whether the enhancement procedure should have been under Bengal Act III of 1878. The Collector thought not, and the Commissioner agreed with him. The enhancement proceedings, Commissioner observed, had been all along treated under Act VIII (B.C.) of 1869, and to proceed now under Act III would delay matters.

The Board, in reply,† observed that the enquiries made by the Collector seemed complete, the grounds for enhancement sound, and the proposed rates moderate. But the notice of enhancement, it was said, would have been more complete and perfect if it had specified the jama now paid by the tenure-holders and the increased area on which the rent is now calculated.

† Board's order No. 66A, dated 25th February 1879.

As to the question of the Act to be applied, it seemed to the Board that it was open to the Collector to issue the notice under Bengal Act VIII of 1869, as he had done, without availing himself of Act III of 1878, even if he could legally do so.

Collector was then desired "to make a demand on the tenure-holders for payment of the enhanced rent as soon as any instalment of it falls due."

The tenure-holders, however, objected‡ to the enhancement, urging the usual ground of permanency of previous rate, and served a notice on the Collector under Section 424 of the new Civil Procedure Code.

‡ Commissioner's No 921NC, dated 1st March 1879.

This notice led to its being found out that the enhancement notices had been tampered with, although it had been directed that the tenants should be recognized as shikmi talukdars, and the whole tenour of the enhancement notice was to that effect; they were actually styled in it "patao proja," and the notice was headed "Notice under Section 18, Bengal Act VIII of 1869," which refers to ryots only, while the reference to Bengal Act III of 1878, which led to the notice of suit, was in direct opposition to the Collectors and Commissioner's letters, which distinctly said that the notice was not issued under that Act.

The use of the term "patao proja" was justified by the fact that it is the translation, as used in the *Gazette*, of under-tenant. The other errors in the enhancement notice were ascribed to wilful obstinacy or negligence on the part of the Government Pleader, and accidental or intentional error in the Collector's office.

The case was decreed by the Judge of Noakholly, on the ground that the tenure was a permanent tenure, and had been decided to be such by the Munsiff in 1875. He held that the decision of the Subordinate Judge simply declared that the Munsiff's finding on this point should not be binding, and did not reverse it. The case is now before the High Court in appeal the main point at issue being the validity of the plaintiffs' plea that they are entitled to hold at fixed and unalterable rates, though the Government are further embarrassed by the alleged irregularity in the notice.

H. L. HARRISON,
Secretary to the Board of Revenue

The 13th April 1881.

(Annexure IV to Board's Report to Government, No. 357½A, dated 3rd June 1881 paragraph, 38).

HAOLA TENURES (WASTE LAND RECLAMATION) IN THE BACKERGUNGE DISTRICT.

Minute by the Lieutenant-Governor of Bengal, dated 26th April 1876

A question has been submitted by the Board of Revenue regarding "haola" tenures in the deltaic district of Backergunge. A haola tenure means the grant by the landlord of a certain limited area of waste land to a small agricultural capitalist, called the "haoladar," in order that he may reclaim it: he settles down some cultivators on the land, advances them some little money wherewith to erect homesteads, buys ploughs and cattle, and gives them seed for sowing the food-crops, and the like: he collects rents from them year by year, and pays some quit-rent to the landlord. The rents realizable by the haoladar from the cultivator follow the conditions of all other rents. The quit-rent payable by him to the landlord is generally variable, and may be enhanced according to circumstances. The permanency, however, of his tenure as haoladar, and his position as middleman between the landlord and the cultivator, is, as I understand, not open to question. So long as he pays the quit-rent to the landlord, he may keep his tenure, and make his own arrangements with the cultivators.

2. Such is the general case with the haola tenures in private estates permanently settled.

3. But there are many estates, some belonging to Government and others to private persons, in which the dues receivable by Government are temporarily settled for terms of 20 and 30 years from time to time. Some of these have been leased to farmers. A new settlement is now being made of the Government revenue, and the settlement officers are at the same time fixing the rents payable by the cultivators. In most of these estates there are haola tenures, and as a new settlement is being made, a question has arisen as to whether the settlement officer has a right to determine the rents receivable by the haoladars from the cultivators, as well as the quit-rent payable by the haoladars. The haoladars, who constitute an important class, while admitting the right of the settlement officer to revise the haola quit-rent, yet strongly object to the rents of the cultivators being fixed by the settlement officer, alleging that this matter should be left to be arranged between the haoladars and the cultivators; on the other hand, it is urged that these cultivators are entitled to have their rents fixed by settlement, as all other cultivators.

4. After considering all that is submitted by the Board of Revenue, I think that wherever a real haola tenure has arisen, the right of the haoladar to settle the rents with his cultivators without interference from the settlement officer must be allowed. This right arises from the nature of the case and the custom of the country. If this were not allowed, I should apprehend, after consulting the Collector, that some trouble might arise in the district.

5. Some of these tenures have been informally granted, but have acquired validity from having been indirectly or tacitly acknowledged in previous settlements. In these cases the full haola right must be allowed.

6. In other cases there appear to nave been temporarily recent, or unauthorized acquisitions of tenures, which are now called haola, but which cannot be so acknowledged formally. Such cases are grants made by farmers within the period of the expired settlements, or even by other authorities not competent. In such instances a permanent haola tenure cannot be recognized; the land must be settled like all other lands, and the rents of the cultivators must be fixed by the settlement officer.

RICHARD TEMPLE.

No. 1150.

Copy forwarded to the Secretary to the Board of Revenue, Land Revenue Department, with reference to his letter No. 194A, dated 29th March 1876.

By order of the Lieutenant-Governor of Bengal,

H. LEE,

Acting Asst Secy. to the Govt. of Bengal.

CALCUTTA,
The 28th April 1876.

APPENDIX IV.

MEMORANDUM ON THE RENT BILL.—BY MR. H. J. REYNOLDS (ON SPECIAL DUTY).

SINCE the Report and the draft Bill of the Rent Commission were published in July last, the Government has received on the subject a number of reports and memorials, to which attentive consideration has been given. A list of these papers will be found in the Appendix. It may fairly be said that the opinions thus presented justify the Government in believing that it is now in possession of the views entertained upon this subject by all classes of the community interested in the question, and by the great majority of those whose official experience qualifies them to act as the advisers of Government in dealing with a matter of such great public importance. The opinions received embrace reports by members of the Judicial and of the Executive branches of the service, memorials from Associations of Landholders in different parts of the country, minutes of individual zemindars, local committees and pleaders, and representations from ryots and from those who advocate their interests. There is, perhaps, no view of the rights and duties of the different classes concerned with land, which does not find an expression in the papers which have thus come under examination. The Howrah petition strenuously maintains that Act X of 1859 was an infringement of the rights of the ryots, and that the Settlement of 1793 was intended to fix existing rates of rent in perpetuity. On the other hand, the memorial from the Behar Landholders' Association naturally lays stress upon those expressions in the old Regulations, and in subsequent decisions of the Courts, which appear to invest the zemindars with complete proprietary rights. In the great majority of the reports, the question is discussed from a point of view intermediate between the two extremes, and the Government is thus in a position to decide upon disputed points with the aid of a valuable mass of information and opinion, collected from all sections of the community, and sufficiently copious to make it unlikely that any question of practical importance can have escaped adequate notice.

Most of these opinions and reports had been received by the end of January; and it then appeared to the Lieutenant-Governor that the time had arrived for some formal embodiment of the views which, at that stage of the discussion, commended themselves to the approval of the Government of Bengal. It was thought to be the most convenient arrangement that these conclusions should be formulated in the shape of a draft Bill, founded upon the original Bill of the Commission, but containing those modifications of that measure which the Lieutenant-Governor, as then advised, was disposed to accept. The draft Bill of the Commission must remain the basis of any legislation which may be undertaken in these provinces upon the Law of Landlord and Tenant; and, if it has been thought expedient to make some alterations in their scheme, this does not detract from the merit of their labours, or from the value of the contribution which they have made to the settlement of the question.

The first fourteen chapters of a Bill were accordingly drafted in February last, and circulated with an explanatory memorandum for the consideration of the British Indian Association and others interested in the Rent Question, as well as for the opinions of selected Government officers. It was pointed out that these draft chapters were not to be understood as conveying the ultimate decision of Government, but rather as presenting, in a concrete form, provisional conclusions upon which further discussion was invited with a view to the settlement of this great question upon a sound and permanent basis. At the same time it was asked that the Bill should not be subjected to merely destructive criticism, but that those who dissented from its provisions should be prepared to state not only why they disapproved of them, but what they would substitute for them.

In reply to this call a number of opinions have been received, which are now under the consideration of Government. It appears, however, convenient to

leave the Government to deal with these; and to complete the draft Bill, with the preparation of which I was entrusted, by the addition of the chapters relating to procedure, without attempting to make any material changes in the fourteen chapters first issued. The Bill attached to this memorandum may, therefore, be taken to be a first recension of the draft Bill of the Commission; and this memorandum may be regarded as supplying the place of a statement of the objects and reasons of that recension, some departures from the Commission's scheme having been made to meet the expressed views of Government, and some sections being still open to further modification in the light of the opinions and criticisms now coming in.

*Section 6.**—This section retains the presumption of the existing law, except in the case of tenures in an estate not permanently settled. Paragraph 24 of the Report shows that the point was fully considered by the Commission.

In the majority of the papers forwarded to Government, the section is passed over without notice, as it involves no considerable alteration of the present law. The Commissioner of Orissa thinks that the 20 years' presumptive rule should be retained. The Subordinate Judge of Burdwan considers that the presumption should only arise when uniform payment is proved for 20 years previous to 1859. The Collector of Mozufferpore would confine the exception to tenures situated in an estate which has never been permanently settled. But the zemindars of Chittagong, the Behar Indigo Planters' Association, the Judge of the 24-Pergunnahs, and Baboo Joykissen Mookerjea, have strongly remonstrated against the operation of the section as throwing an unfair burden of proof upon the zemindar. It is urged in particular that the law bears very hardly upon auction-purchasers, who are often unable to get possession of the zemindari papers of their predecessors. This is forcibly represented by the Collector of Purneah, who believes that "there is hardly an estate in the whole of Bengal in which the value of the proprietary right has not suffered from this presumption."

Allowing all due weight to the arguments of the Commission, it is to be remembered that the presumption was first introduced by Act X of 1859, and that it was then necessary for the tenant to prove a uniform rate from 1839. It is now only necessary to prove such uniform payment from 1861. As there is reason to think that rent receipts have been much more regularly given, and much more carefully preserved, during the last 20 years, than during the 20 years which preceded them, it seems to follow that the lapse of time has made it more and more easy to raise the presumption, and more and more difficult to rebut it. Nor can it be denied that auction-purchasers labour under a special grievance in this matter. If it be said that they may be expected to regulate their bids accordingly, it may be replied that it is not for the public interest that estates should sell below their value on the ground that the circumstances of the sale facilitate the advancement of fraudulent claims by the tenants.

The exception in the case of tenures in an estate not permanently settled is stigmatised by Baboo Joykissen Mookerjea as an invidious distinction which shows the injustice perpetrated on the holders of permanently-settled estates. A little consideration will show that the exception is perfectly reasonable. Broadly speaking, it may be said that rent in Bengal is that share of the produce which originally belonged to the Government, and which has been assigned to the zemindars in return for a fixed annual payment. In an estate not permanently settled, the Government share may vary, and usually does vary, at each successive re-settlement; and there is consequently nothing inequitable in saying that variation shall be assumed unless uniformity is proved.

Without entirely abolishing the presumption, it seems reasonable to enact that its operation shall be confined to cases in which uniform payment can be proved for 20 years before the period when the presumption was first introduced into the law. A further concession has been made in favour of auction-purchasers, and it is provided that the presumption shall not be pleaded against them, though they will of course be bound by any former decisions of the

* The references to chapters and sections in this paper are to the original draft Bill of the Rent Commission. The Bill which accompanies this paper is referred to, when necessary, as draft Bill (II).

Courts, by which the right to hold a particular tenure at a fixed rent may have been affirmed. The only other alteration made is the addition of an explanation, corresponding with that appended to section 17. The cases quoted under Article 38 of the Digest show that this explanation only affirms what is already the law.

This alteration of the law is possibly open to the objections that it is as much too favourable to the landlord as the previous rule was to the tenant, and that a law which concerns limitation ought not to be altered with retrospective effect. Some precautionary words will, perhaps, be necessary to prevent abuse of the section as it now stands, and in particular to guard against the danger of landlords allowing their property to be sold for the express purpose of obtaining the advantage thus given to auction-purchasers. But, in determining the principle upon which the Legislature should act, it would seem that the main point to be considered is the practical effect of the presumption which was introduced into the Act of 1859. Has this presumption generally operated to defeat an unjust claim on the part of the landlord, or to maintain the tenant in a status to which he was not rightfully entitled? It is believed that to this question there can be only one answer. In the great majority of the cases in which the presumption has been successfully pleaded, it has had the effect of conferring upon tenants whose holdings really originated subsequently to 1793, a privilege which was intended to be confined to those who had held from the date of the permanent settlement. If this is really the case, it does not seem inequitable that the rule should be modified in the manner which has now been suggested.

Section 8.—This section provides for the enhancement of a tenure-holder's rent in consequence of alluvion, and abatement for diluvion or otherwise. The increase or abatement is to be proportional to the area gained or lost.

Baboo Protapnarain Sing, Deputy Collector of Bankoora, remarks that under the present law the rents of putnee talooks are not enhanceable on account of alluvion. The Collector of Beerbhoom thinks the words or "otherwise" either unnecessary or dangerous. He believes that in many cases rents have been fixed with reference to the possibility of alluvion or diluvion. The Commissioner of Bhagulpore observes that the area is not the proper standard to regulate enhancement or abatement. Baboo Surjinarain Singh, a pleader of Bhagulpore, makes the same remark. The Judge of Sarun considers that the increase should be according to the annual value, and not according to area. The Judge of Cuttack thinks that the Court should be permitted to assess the rent equitably payable for alluvion. The Eastern Bengal Landholders' Association are of opinion that the section is ambiguous, as it leaves it doubtful whether enhancement will be allowed when both alluvion and diluvion take place, and land is thus added to the tenure without increasing the total area. The Association also appear to be under the impression that when lands are assessed by Government under Act IX of 1847, the zemindar is compelled to take the settlement. It would seem that the argument of the Association is founded on some misconception. Land is added to a tenure when an accretion takes place beyond the limit of the original boundary, and the zemindar is quite at liberty to decline the settlement of dearah lands, and to receive malikana only. This also disposes of the further argument of the Association, that the zemindar ought to be held entitled to increased rent even in cases of an express contract to the contrary. The zemindar can suffer no loss: for if his contract with the tenure-holder makes it unprofitable to him to accept the settlement, he is quite at liberty to refuse it.

The standard of area was perhaps adopted as affording the simplest basis of calculation, but it seems to have been overlooked that the area gained or lost may be in some cases far more valuable, and in others far less valuable, than an equal area of the rest of the tenure. There seems no reason why land added to a tenure should not be liable to rent at full current rates. Regulation XI of 1825 recognises the title of the tenure-holder to the accretion, but says nothing of his right to hold it at the rates payable for the lands of his tenure. When dearah lands are assessed by Government under Act IX of 1847, they are assessed at full rates, without any regard to the incidence of revenue on the lands of the parent estate. This consideration is urged by Baboo Parbuttichurn Roy, Deputy Collector of Dacca.

The section is discussed in paragraph 51 of the Report, and the Commissioners speak of it as a settlement of a doubtful question in accordance with justice, equity, and good conscience. The fairness of the principle of the section will probably be generally admitted. The words "or otherwise" are simply reproduced from the existing law, and there is no valid reason for omitting them. They are necessary to provide, not only for cases of expropriation under the Land Acquisition Act, but for cases in which part of a tenure may be lost owing to a defect of title in the grantor.

The section as now amended declares that the increase shall be calculated at the customary rate, or at such rate as the Court shall consider equitable; and that the abatement shall be in proportion to the diminution of the total assets of the tenure.

Section 9.—There is a great preponderance of opinion that the limit of 30 per cent. in this section is too high. The Commissioner of Bhagulpore thinks it "extravagantly high." The Commissioner of Burdwan would reduce it to 20. The Commissioner of Orissa remarks that for any but very exceptional cases 30 per cent. is much too high. On the other hand, the Collector of Burdwan does not think it too much, and the Collector of Purneah is not prepared to suggest any alteration. The Collector of Dacca thinks the limit of no importance, because the customary rate can almost always be ascertained. The Second Moonsiff of Burdwan considers 30 per cent. a fair limit, and so does the Moonsiff of Pubna; but the Subordinate Judge of Dinagepore would raise it to 50 per cent., and the Subordinate Judge of Moorshedadad would restrict it to 10 per cent. The Judicial officers of Gya think 30 per cent. too much. The Eastern Bengal Landholders' Association remark that the zemindar never gets more than 20 per cent. as malikana, and that there is no reason for allowing a tenure-holder a higher rate as profit.

A further question is raised by the Commissioner of Bhagulpore, who asks what is to be the basis for calculating the gross rents. Are they to be the rents actually paid, or the amounts to which the ryots' rents might be enhanced? As the tenure-holder's rent, when once enhanced, cannot be again enhanced for ten years, he may wait till his rent has been enhanced on the basis of the rents payable to him at the time, and may then enhance the rents of the ryots without any fear of a corresponding addition being made to his own rental for ten subsequent years

The answer to this is that, in the case supposed, the proprietor might have kept the profit in his own hands, if he had chosen to deal directly with the ryots. If he prefers to create a tenure, and by so doing to relinquish the position which he might have held towards the cultivators, he cannot fairly complain if the profits which belong to the status of the immediate landlord are diverted from him to his lessee. It would be unreasonable to say that he may compel the tenure-holder to raise the rents of the ryots, in order to increase the balance which is divisible between the tenure-holder and himself. He must accept the conditions of a position which is the result of his own act. The basis for calculating the gross rents must evidently be the rents actually paid by the ryots.

It will probably be admitted that, if 30 per cent. is too high, 10 per cent., which was the limit prescribed by Regulation V of 1812, is undoubtedly too low It appears reasonable to say, that, in the absence of any customary rate, or of any specific contract binding the landlord, the maximum profit of a tenure-holder shall not exceed 20 per cent. of the gross rents, after deducting the expenses of collection: and the section has been modified accordingly.

Section 10.—This section provides for limitations of enhancement. It is enacted that—

(1) The enhanced rent may not be more than double the previous rent.
(2) The enhancement may be gradual.
(3) Rent once enhanced may not be again enhanced for ten years from the date of the final order for enhancement.

The Behar Landholders' Association complain that the first of these limitations is made to apply to cases of accretion. It does not appear that this was

the intention of the Commission, for increase of rent in consequence of accretion is not properly an enhancement. But if the point is doubtful, there would be no objection to expressly excluding cases under section 8 from the operation of the first limitation of section 10.

The Collector of Dacca thinks it unnecessary to provide that the enhancement may be gradual. Baboo Parbutteehurn Roy, Deputy Collector of Dacca, considers the limits of enhancement fair and equitable, and similar opinions are expressed by the Collectors of Burdwan and Purneah. The Commissioner of Orissa objects to the double limit, but approves the graduated scale. The Commissioner of Burdwan thinks doubling the rent every ten years a very equitable limit. The Collector of Malda considers the limitations to be needful, but very favourable to the tenure-holder. The Collector of Beerbhoom, on the contrary, sees no reason for laying down any limit, nor for making the enhancement gradual. The Commissioner of Bhagulpore thinks the limitation to double the old rent will lead to injustice, but approves of making the increase gradual. He would reckon the ten years from the date of the order in the Court of first instance. Baboo Joykissen Mookerjea considers the provisions of the section very objectionable. But this gentleman weakens the effect of his criticism by going so far as to say that alluvial lands are more fertile and bear a higher rate than other lands; whereas, in cases of diluvion, the lands lost are of an inferior class. The Subordinate Judges of Burdwan, Gya, and Moorshedabad disapprove of the limitations of enhancement proposed in the section. They think the rent may fairly be more than double the previous rent if the lands can afford it. They object to the provision that the enhancement may be gradual, and that rent once enhanced shall not be altered for ten years. In this view the first Moonsiff of Rungpore concurs, and observes that the landlord has a right to participate in any increase. This is also the opinion of the Moonsiff of Pubna. On the other hand, the Second Moonsiff of Burdwan thinks that when rent has once been enhanced, it should remain unchanged for twenty years. The Eastern Bengal landholders object to the limitations in clause (*a*) of the section, but not to the ten years' limit of clause (*b*).

The grounds upon which these limitations are proposed are explained in paragraph 61 of the Report, and it may fairly be said that impartial critics will recognise their general reasonableness. Those who have objected to them have mostly confined themselves to a statement of their opinion, without entering into their reasons. Baboo Joykissen Mookerjea urges that fictitious tenures are created at peppercorn rents in the names of relatives or dependants, and that to limit the enhancement to double the old rent would be an injustice to an auction-purchaser. It is hardly necessary to remark that, if fraud were proved, the courts would annul the tenure; and that, as the tenure must be registered, the auction-purchaser would take account of its existence. The remote possibility that the protection given might in one or two cases be misapplied, is a poor reason for setting aside a provision which would relieve ten times the number of honest holders from an undoubted hardship.

The term of ten years should run, not from the date of the final order, as in the draft Bill, nor from the date of the order in the Court of first instance, as proposed by the Commissioner of Bhagulpore, but from the date on which the enhancement actually took effect. The Commissioner's suggestion assumes that the order of the Court of first instance will eventually be upheld; while the wording of the draft Bill takes no account of the possible delay of a Privy Council appeal.

The only other alteration introduced has been the insertion of words which will make it clear that gradual enhancement is only to be allowed in exceptional cases, and on the ground of hardship.

Section 11.—This section declares that any person who takes more than 100 beeghas of land in a single demise, otherwise than for a term, or year by year, shall be deemed to be a tenure-holder, and not a ryot.

The section is warmly approved by the Deputy Commissioner of the Sonthal Pergunnahs, and is defended by the Commissioner of Burdwan and the Collectors of Pubna, Beerbhoom, Hooghly, and Burdwan, though the latter would raise the limit to 200 or 250 beeghas. All the other opinions are adverse to the proposal, and many of them very strongly so. The objections to

the measure are fully discussed in the reports by Baboo Surjinarain Singh of Bhagulpore and the Commissioner of Chittagong. Mr. Glazier, the Collector of Dinagepore, who was for some years Collector of Rungpore, would have approved of the proposal if it could be carried out without taking away the property of the jotedar class. A jotedar should have the power of proving whether he entered on his tenancy as a ryot; and, if so, he should be entitled to abide by the test provided for ryots of his standing. Mr Glazier thinks it difficult to forecast the effect of including in the class of tenure-holders all ryots who hold more than 100 beeghas. A jotedari tenure-holder collects Rs. 100 from his royts when he pays Rs. 50 to his landlord. The effect of section 9 on his position would seem to be as follows :—

	R
Collections	100
Cost of collection	10
	90
Allowance at 30 per cent.	27
Rent payable	63

This, says Mr. Glazier, would amount to a very serious transfer of property from the jotedars to the zemindar. The jotedars, who are the backbone of the country, who effect agricultural improvements, introduce new staples, and carry on the local trade, would be serious losers They would have their collections assessed on the actual payments of the ryots, and would not be able to claim, as ryots can, the advantage of an ultimate test.

One other objection may be noticed, as some stress is laid upon it by Raja Promothanath Roy. The effect of the section would be to substitute for a number of occupancy holdings, which, in default of heirs, lapse to the zemindar, a number of tenures which, in such default, lapse to the Government. Of course no such effect was intended, and, if the section were retained, a clause would be added to it to provide that it shall not operate to give the Government any claim to succeed by escheat.

An examination of the objections urged shows that many at least of the writers have failed to apprehend the object and meaning of the section: indeed, some of the objections in a great measure refute one another. Thus, the Behar Landholders' Association complain of the section on account of its putting the new tenure-holders in a better position than before; while the Commissioner of Chittagong attacks it on precisely the opposite ground. Several critics object to the section as calculated to increase subinfeudation; but they do not explain why a man who is now called a ryot, but who is virtually a tenure-holder, would be more likely to sublet if he were called what he really is. It does not seem to be clearly understood that the persons who are intended to profit by the section are not the zemindars or the new tenure-holders, but the lessees of those tenure-holders.

The really valid objections to the principle of the measure lie on the surface. It is an arbitrary rule, overriding custom and contract, and placing a number of persons in a position which they never desired or intended to fill. It trenches upon the rights of the zemindars by creating tenures without their consent. It cuts the knot instead of untying it, and sets aside the present law and existing engagements in order to provide for a class of cases which cannot after all be very numerous.

The Government cannot fail to be struck by the fact that, while the zemindars, whose receipts would probably be increased by the adoption of the section have thus far declined to give it their support, it is regarded with no favour in those parts of the country for which it was supposed to be specially required. In the divisions of Dacca and Chittagong not a voice has been raised in its behalf, and it is alleged that in Rungpore its introduction would lead to consequences prejudicial to the economic interests of the district. The section has accordingly been omitted from the Bill: but as the want of some rule for the guidance of the Courts in determining whether a tenant shall be considered to be a ryot or a middleman has been practically felt, a section has been inserted (as suggested by Baboo Surjinarain Singh)

in the procedure portion of the Bill, indicating the principle by which the Courts should be guided in determining the above question.

The reduction of the maximum in section 9 from 30 to 20 per cent. will probably be recognized as a valid reason for the retention of section 12. Junglebooree tenures have always been held entitled to special consideration; and it would be inequitable to restrict them to a limit which may fairly be applied to tenures of a different origin and character. The section has therefore been added after section 9. It will, of course, lie with the tenure-holder to show that he comes within the purview of the section. The Collector of Shahabad remarks that it ought not to be required that the *whole* of the land shall have been reclaimed. The present wording would exclude from the benefit of the section most Sunderbun settlers, and all tea planters, who are obliged to reserve a part of the jungle for firewood. The Collector would therefore read "if such unreclaimed land, or such part of it as may appear reasonable, were reclaimed accordingly." This seems rather an over-refinement. It may be presumed that the Court will take a reasonable view, and will consider whether the tenure, as a whole, can fairly be said to have been reclaimed or not.

Sections 16 to 18.—A few changes have been introduced into this chapter in accordance with those already explained under Chapter I, and a section has been added to define the legal incidents of a holding at fixed rates. It has been declared that such a holding is heritable, transferable, devisable by will, and liable to sale in execution of any decree of the civil court; but that no division of the holding or of the rent shall be valid against the landlord without his written consent. The character of a holding at fixed rates approximates so closely to that of a tenure, that the objections which have been made to declaring an occupancy holding to be transferable will perhaps not be considered applicable to a holding of this nature. It will be seen on a reference to Chapter XVIII that the Bill leaves it undetermined whether a holding at fixed rates is to be sold as a tenure, or as an occupancy holding. The point is reserved for future decision; but it appears reasonable that such a holding should be sold under the procedure applicable to a tenure.

Sections 19 and 20.—Under these sections it is to be considered how the occupancy right shall be defined, who shall be permitted to acquire it, and what incidents shall attach to it.

The Government of Bengal has already accepted the principle that the right ought to be given to the great mass of settled cultivators. This is in accordance with the opinions of the great majority of officers consulted. The Collector of Bankoora is in favour of maintaining the law as it stands, and the Presidency Commissioner seems to be of the same opinion. Baboo Joykissen Mookerjea is opposed to any extension of the right, and holds that the exercise of plenary powers by the zemindar is a benefit to the ryot. The zemindars of Chittagong consider that no case has been made out for the grant of fresh rights to the tenant. The Eastern Bengal Landholders' Association would confine the acquisition of the right of occupancy to actual cultivators. The Collector of Sarun would give the right to all resident ryots of the village, and would maintain the 12 years' rule as regards other ryots. The Judge of Tipperah considers that all khoodkast ryots should have occupancy rights, irrespective of prolonged occupation. Pundit Luchminarain, of Lucknow, thinks it important to give fixity of tenure to ryots who make agricultural improvements, especially improvements connected with irrigation.

The question has been very fully discussed, and it is believed that few of those who have studied its history will be prepared to controvert the proposition that, by the law and custom of these provinces, the "khoodkast ryot" is entitled to hold his lands so long as he pays the rent legally demandable for the same. It remains to be determined, what definition can be adopted which will fairly and adequately embrace the class, and no more than the class, to which this privilege attaches by ancient law and immemorial custom.

The introduction of the element of time into the definition was, as Baboo Kishori Lall Sirkar has pointed out, an innovation and an anomaly. A century ago the essence of the khoodkast ryot's status was that he was a cultivator residing in the village in which he held his land: and in those

days the village had ordinarily only one landlord. But the sub-division of property, and the great multiplication both of villages and of estates, have made this simple test inapplicable to the circumstances of the present time. To say that the right shall attach to those resident ryots of the village who live on the estate of the proprietor whose lands they cultivate, would not only exclude many who rightly fall within the principle of the old definition, but would enable an unscrupulous landlord to evade the law altogether, by refusing to lease homestead lands to his ryots. The spirit of the rule which requires residence in the village will perhaps be best preserved by fixing a limit of distance: and the definition adopted in the draft Bill (II) has been framed upon this principle, which has already been suggested by Baboo Brojendro Kumar Seal, in the note printed at page 494 of the Proceedings of the Commission. The expression "fixed habitation" is taken from the Indian Succession Act, where it is used to define the meaning of "domicile." The use of the phrase in the Act may reasonably be taken to show that the "fixed habitation" of a person is a matter susceptible of legal proof in a court of law.

It must be admitted that this wording, by introducing "the estate" as one of its factors, covers a wider area than the old definition; and, though it is understood that the zemindars generally are willing that the occupancy right should be enjoyed by resident ryots of the estate, the Government would perhaps not wish to press the adoption of any definition which would do more than affirm and secure the principle of the old Regulations. By another form of the section, which is now under the consideration of Government, it is proposed to enact that a cultivator who has resided on an estate for 12 years, shall be deemed to be a resident ryot of that estate, and that every resident ryot shall have a right of occupancy in the lands which he holds in the estate of which he is a resident ryot, leaving him to acquire the right in other lands under the 12 years' rule of actual occupation. The question is still an open one, and it must be understood that the definition in section 19 of the draft Bill (II) has not yet received even the provisional acceptance which has been accorded by Government to other sections of the Bill.

The proposal to extend the right of occupancy to the tenants of mokarraridars has a great preponderance of opinion in its favour. It is disapproved by the Subordinate Judge of Moorshedabad, as calculated to raise the status of mokarraridars, who are "mere vampires on the land," and by the First Moonsiff of Rungpore, as tending to reduce the landlord to the position of an annuitant. The Collector of Patna would confine the right to the tenants of mokarraridars of 100 beeghas of land, and the Collector of Furreedpore disapproves of the proposal altogether. But all the other opinions are in favour of it, and several Collectors say that such a right already exists in their districts.

Clause (*c*) of explanation 3 of section 19 raises the difficult question of sub letting. At present an under-ryot cannot acquire a right of occupancy.* The draft Bill proposes to give him the right, if he holds his land otherwise than for a term or year by year.

The proposal has been generally disapproved. It is objected to by the Collectors of Purnea, Malda, and Furreedpore; by the Commissioners of the Presidency, Chittagong, Orissa, and Bhagulpore Divisions; and non-official opinion has pronounced strongly against it. The Eastern Bengal Landholders' Association would prohibit subletting on pain of forfeiture to the landlord, and transfer of the occupancy right to the sub-lessee. Almost the only Government officers who support the clause as it stands in the draft Bill of the Rent Commission are the Collector of Dinagepore and Baboo Parbuttichurn Roy, Deputy Collector of Dacca. The Collector of Bhagulpore would allow an under-ryot who has held for 12 years to have an occupancy right in the place of his lessor, and the Commissioner gives a modified assent to this. The Commissioner of Rajshahye would confer the occupancy right on the actual cultivator.

It appears to have been the object of the Rent Commissioners to discourage subletting, by leaving only a small margin between the rent of the

* On this point there seems to be a discrepancy between Article 53 of the Digest and the last sentence of paragraph 30 of the Report.

occupancy under-ryot and the rent which the occupancy ryot himself might be required to pay to his landlord. They accordingly fixed the maximum in the one case at 30, and in the other at 25 per cent. of the gross produce. But it is evident that this scheme affords only a palliative of a very partial character, as in the great majority of cases the superior ryot would sublet wtithout allowing a right of occupancy to be gained by his lessee. Looking al the same time to the very general disapproval which the scheme has ericited, and to the somewhat complicated system of rights which might be ceated under it, it may be doubted whether the plan of the Commissioners affords a satisfactory solution of the difficulty. But the remedy is not to be found in prohibiting all subletting by an occupancy ryot. Such a rule would be practically inoperative, and would run counter to the established usage of the country, while it might be productive of much hardship in individual cases. On the other hand, to admit the lessees of occupancy ryots generally to a right of occupancy, would tend to lower the status of the occupancy ryot to the level of the korfa; and this is very far from the object and desire of Government.

The manner in which it is proposed in the draft Bill (II) to deal with this question is intended to be taken rather as a tentative suggestion than as a definite expression of the determination of the Government. It is thought that the object aimed at would perhaps be substantially attained by limiting the rent payable by all under-ryots. If it were provided that the maximum of an under-ryot's rent shall not exceed 30 per cent. of the gross produce, and shall not be more than four annas in the rupee above the rent paid by the superior ryot, this would tend to check subletting, and would also prevent the exaction of an exorbitant rental from the actual cultivator. The concession of the sub-occupancy right might in this case be dispensed with. It may be noted that the provisions regarding distraint will operate in the same direction. It is proposed to enact that if an occupancy ryot sublets without the written permission of his landlord, the crops shall remain liable to distraint for arrears of rent due by the occupancy ryot, and this may be expected to restrict subletting, because the landlord will not very readily grant a permission which will involve the abandonment of his right to distrain, while the under-ryot will hesitate to take land the crops of which will be liable to distraint not only for his own rent, but for the rent of the occupancy ryot under whom he holds.

The following alterations have accordingly been made in the draft Bill (II): in section 19, explanation 3, clause (*e*) has been omitted, and clause (*f*) of explanation 4 has been modified, and a section has been introduced in the proper place to limit the amount of rent which may legally be recovered by an occupancy ryot from an under-ryot.

Clause (*h*) of explanation 4 provides that a right of occupancy shall not be required by a tenant who has executed a written and registered contract that the right shall not accrue. The Commissioners remark in paragraph 31 of their Report:—"Although we think it unadvisable to prevent parties altogether from contracting themselves out of the operation of the Act, we think it desirable to require in all cases the clearest evidence of their intention to do so"

There is a great proponderance of opinion against this clause. It is strongly urged that the object of the Act will be defeated if the ryot is allowed to contract himself out of its provisions, and that, in such cases, the ryot is really not a free agent, or an intelligent party to the contract. This view of the case is advocated by the Commissioners of Burdwan, Bhagulpore, and Orissa; by the Collectors of Furreedpore, Hooghly, Midnapore, Burdwan, Monghyr, Shahabad, Mozufferpore, and Malda; and by the Deputy Commissioner of the Sonthal Pergunnahs. On the other hand, the clause is supported by the Commissioner of Chota Nagpore, the Collectors of Patna, Bankoorah, and Beerbhoom, and Baboo Surjinarain Singh of Bhagulpore, who would extend its scope to unregistered contracts executed before the passing of the Registration Act. Baboo Parbuttichurn Roy of Dacca would give relief only in cases in which it was shown that the ryot had been deceived into surrendering his right. The Eastern Bengal Landholders' Association wish the clause to

be modified so as to allow the acquisition of a right of occupancy to be barred by a contract made at any time before the actual acquisition of the right. Among Judicial officers, the Judges of Cuttack and Jessore approve of leaving contracts entirely free. The Second Moonsiff of Bhanga (Furreedpore) would leave the clause as it stands in the draft Bill. But the Judge of Tipperah, the Subordinate Judge of Dinagepore, the Moonsiffs of Berhampore, Rungpore, Shahazadpore, and Buxar, and the Second Moonsiff of Burdwan, express a decided opinion that no contract should be allowed to interfere with the accrual of the right.

It cannot reasonably be doubted that the operation of the clause would go far to defeat the intention of the Legislature in affirming the occupancy right, and it may fairly be argued that it is a matter of public policy that this should not be allowed. Landlords and tenants were not permitted to contract themselves out of the provisions of the Irish Land Act of 1870, and in such matters the Bengal ryot is even more helpless and more ignorant than the Irish cottier. Whether existing contracts should be respected may be a further question. But it will be observed that the definition above suggested does not provide any means by which a right of occupancy may accrue, but declares the right to belong to a certain class of the agricultural community. There are, doubtless, many ryots who have been induced to execute contracts which specify no term of years, but which provide that the right of occupancy shall not accrue, and that the lands shall be surrendered to the zemindar on his demand. Such ryots, and probably their successors in title, would be bound for ever by these contracts, unless the Legislature interferes in their behalf. On the broad principle, therefore, that the right of occupancy is a right inherent in the status of a settled cultivator, it has been declared that no contract, whether executed before or after the passing of the Act, shall debar a tenant from acquiring the right, except in cases falling under section 32.

The draft Bill proposes to enact that an occupancy holding shall be (1) saleable for its own arrears, but not for any other decree; (2) transferable without the landlord's consent; (3) not liable to be mortgaged by the ryot.

The reports received show a remarkable conflict of opinion upon these proposals; but few, if any, arguments have been put forward which have not already been discussed in the Report of the Commission and in the Note appended to Mr. Field's Digest. There is no doubt that the landlords are strongly opposed to unrestricted transferability. No point was more dwelt upon than this in the conferences which were held at Hooghly and Dacca.

The Behar Landholders' Association disapprove of making the holding transferable, but suggest by way of compromise that the landlord should be permitted either to eject the ryot, or to bring the holding to sale for arrears. They would not make the holding saleable in execution of any decree except for rent due to the entire estate. They would allow *bonâ fide* transfers to ryots of the same estate, but would give the landlord a right to purchase at the price offered. The Behar Indigo Planters' Association wish for free transfer by sale, and declare that this is in accordance with present custom. The Collector of Dacca would not make occupancy holdings transferable. He would leave the law as it is; but if sales are permitted, he would also allow mortgage. The Collector of Furreedpore is strongly opposed to transfer either by private sale or in execution of any decree except for arrears of rent. He would not allow mortgage. The Collector of Mymensingh would not make the holding transferable. Baboo Parbuttichurn Roy of Dacca would allow transfer and mortgage, but would not make the holding saleable for any decree except for rent or on a mortgage bond. The Commissioner of Bhagulpore would allow private sale only with the consent of the landlord, and thinks the prohibition of mortgage undesirable. The Collector of Malda would allow free transfer and mortgage, and so would the Collectors of Burdwan, Hooghly, and Monghyr. Baboo Surjinarain Singh of Bhagulpore would allow mortgage. The Commissioner of Rajshahye would allow the ryot a right of transfer, if the zemindar is given the power of summary sale. The Collector of Rungpore would prohibit mortgage, but would make the holding saleable in execution of any decree. The Commissioner of Burdwan would allow unrestricted

sale, either privately or in execution of decree, and would also allow mortgage. Baboo Joykissen Mookerjea thinks the right of transfer mischievous, and concurs in the view of the Chief Justice. The Collector of Midnapore agrees with the Rent Commissioners, except as to mortgage, which he would allow. The Collector of Purneah would forbid all transfer, and the Deputy Commissioner of the Sonthal Pergunnahs would allow it only with the leave of the landlord. The zemindars of Chittagong would leave the law as at present. The Commissioner of Orissa doubts whether the clauses of the Bill will be effectual, but on the whole he would retain them. The Presidency Commissioner does not object to making the holding transferable. The Bankoorah Local Committee would allow free transfer and mortgage, and in this the District Moonsiffs generally agree. The District Collector would make the right transferable and mortgageable, and liable to sale for any decree. The Maunbhoom Committee would not forbid mortgage, but the Commissioner of Chota Nagpore does not agree with them. Pundit Luchminarain, of Lucknow, thinks that the holding should be made saleable for any decree, but that the decree-holder should be debarred from purchasing. He would restrict the inheritance of a holding to lineal heirs, and to collaterals within three degrees; and would declare all holdings less than twenty beeghas in extent to be impartible. The Judge of Cuttack expresses a similar opinion regarding inheritance; but he would make the holding purchaseable only by the landlord or by an actual cultivator. He would allow transfer under such restrictions as would prevent the holdings from falling into the hands of land speculators; and would not permit any occupancy ryot to hold more than 50, or perhaps 75, beeghas of land, this being assumed to be the maximum quantity which a single family can cultivate without subletting. The Judge of Sarun approves of the prohibition to mortgage; but the great majority of officers hold a different opinion. The unrestricted right of transfer, without the landlord's consent, is generally condemned by judicial officers; and those who would allow free transfer would also allow the holding to be mortgaged, and to be sold in execution of any decree. The Eastern Bengal Association think that transfer should be prohibited, and that landlords should be allowed an option either to sell the holding or to evict the tenant in case of an arrear. They object to the payment of compensation to evicted ryots. The Collector of Patna would not give the ryot the right of transfer, except with the landlord's consent. The Collector of Shahabad approves the proposals of the draft Bill. The Collector of Mozufferpore generally agrees; but thinks that no division of the holding should be allowed without the consent of the proprietor, and that the landlord's consent is not sufficient. The Collector of Durbhunga considers that both sale and mortgage should be permitted. The Collector of Sarun is of opinion that the prohibition of mortgage is wise, at least for the present, and that there should be a corresponding restriction of the right of sale. He believes that sales are already common, but where no custom of sale is established, he would make the consent of the landlord necessary, at any rate as a temporary measure.

It is hardly possible to advance any new argument upon a question which has been so fully discussed; but it is suggested, for the consideration of those landlords who are opposed to transferability, that the power of transfer, by adding to the value of the tenant right, improves the landlord's security for his rent. The objection that the land will be liable to pass into the hands of non-resident mahajuns is in some measure met by the definition of an occupancy ryot which has been adopted in the preceding section. The plea that holdings in a zemindar's estate may be bought up by the nominees of a hostile proprietor is less easy to deal with, and cannot be dismissed as a mere sentimental grievance. It will be found that a section has been introduced into the chapter on registration, providing that, if a landlord objects to a transfer, he may take over the holding at the transfer price. If this provision should not be thought to give sufficient security to the landlords, the Government will perhaps be prepared to consider whether the section might not be modified so as to make the right of transfer dependent upon the consent of the landlord, power being at the same time reserved to the tenant to bring a suit to compel his landlord to recognize a transfer, or to assign reasons, to the satisfaction of the Court, for his refusal. This, however, would not be allowed to

interfere with the operation of any existing custom, by which the right may at present be transferable in any particular locality.

It seems to have been an oversight in the Bill of the Commission to omit to declare, in the language of section 5 of Act X of 1859, that one of the incidents of a right of occupancy is the right of the tenant to hold at a fair and equitable rate, and that in case of dispute, the rate previously paid shall be deemed to be fair and equitable, until the contrary is shown. A clause to this effect has now been inserted. The only other alteration which has been made in this part of the section is the omission of the clause which prohibits mortgage. It has been thought proper to abandon this clause, not so much because it would be injurious as because it would be inoperative. If the clause would really have the effect of preventing mortgages, it might be advisable to retain it: but there seems reason to believe that mortgages would be effected as before, but on terms more unfavourable to the ryots. As in the case of the usury laws, the illegality of the transaction would be a ground for the demand of higher interest. But, though mortgage is not prohibited, it is not proposed to make the holding saleable in execution of a decree upon a mortgage bond, or for any other decree than for arrears of its own rent.

Clause (*e*) of section 20 declares that an occupancy ryot may not be ejected except for breach of a stipulation for which ejectment is the penalty agreed upon, and that in this case he shall be entitled to compensation for improvements. The Commissioners of Bhagulpore and Chittagong, and the Collector of Bankoorah, would allow ejectment. The zemindars of Chittagong and the Behar Landholders' Association object to the provision for giving compensation. The Commissioner of Orissa would not allow ejectment, but would permit the holding to be sold in execution of a decree for damages for breach of stipulation. The Collector of Malda would allow ejectment, as he considers that equitable relief could not be given.

On the other hand, the Judge of the 24-Pergunnahs, the Commissioners of Burdwan and Chota Nagpore, the Collectors of Dacca and Beerbhom, and Baboo Surjinarain Singh of Bhagulpore, concur in thinking that ejectment should not be enforced where the injury done to the landlord by the breach of stipulation can be fairly compensated by an award of damages. It seems probable that the equitableness of this view will be generally recognized, and the clause has been amended accordingly.

The wording of the section appears to leave it uncertain whether a person who may come into possession of an occupancy holding under the clause which recognizes the transferable character of such a holding, will be required to be, or to bring himself, within the definition of an occupancy ryot. It seems reasonable that some such condition should be imposed; but the question is one upon which the Government must come to a final decision, and it would perhaps be premature to decide it until it has been determined under what circumstances the occupancy right shall be given. It is desirable to guard against the contingency of the land falling into the hands of speculators or money-lenders; but, on the other hand, to lay down the rule that the tenant of an occupancy holding must be an actual cultivator would be opposed to the prevalent custom of many parts of the country.

Section 21.—This section is approved by the Bankoorah Local Committee, by the Commissioners of Bhagulpore, Orissa, and Chota Nagpore, and by the Collector of Burdwan. The Collector of Beerbhoom would omit the provision regarding crops other than staple crops. Baboo Joykissen Mookerjea would leave the matter to be settled by mutual contract. The Collector of Purneah thinks the limit fair, but would not let the section interfere with existing rents. The Collector of Malda would reduce the limit to 25 per cent., and the Collector of Furreedpore thinks the rates very high. Baboo Surjinarain Singh, of Bhagulpore, strongly disapproves of the section. The Eastern Bengal Association complain that the rate fixed by this section is much below the present prevailing rate. The Second Moonsiff of Burdwan thinks the section will be acceptable to both landlords and tenants, and the Judge of Tipperah considers 50 per cent. too large a share for the landlord. But the majority of Judicial officers think the section unfair to landlords, and deprecate interference with private contracts.

The only change which has been thought necessary is the addition of a few words to show that the section is not intended to override contracts, and that its operation extends to cases in which the money value of a share of the produce is deliverable.

Section 22.—The Collector of Sarun remarks that the cost of production should be taken into consideration, and that the ability of the ryot to pay an increased rent is the only legitimate ground of enhancement. The Collector of Mozufferpore thinks that ryots whose holdings do not exceed five local beeghas should not be liable to enhancement on the fourth ground, as a rise of price cannot benefit cultivators who must consume the whole of their produce. The Collector of Shahabad considers the wording of the present law preferable to that of the Bill. The Judges of Cuttack and Tirhoot approve the proposals of the Bill regarding enhancement and abatement. The Subordinate Judge of Midnapore thinks that no enhancement or abatement should be allowed on account of the increase or decrease of the prices of produce, unless the increase or decrease has been effected by the act of the landlord. The Second Moonsiff of Bhanga (Furreedpore) sees no reason why, in the absence of any contract, a tenant who is paying less than his neighbours should be made to pay an equal rent. Illustration (*c*) of ground (2) is objected to by the Subordinate Judge of Moorshedabad and the First Moonsiff of Berhampore: but the principle of it is approved by the Moonsiff of Gya, in cases in which the land has been let as a complete holding, and not at a rate of so much per beegha. The Eastern Bengal Landholders' Association think the illustrations will raise more difficulties than they will clear up. They object to the rule regarding the enhancement of the rent of pasture lands, and the Collector of Shahabad makes a similar remark.

The alterations which have been made in this section are unimportant. Clause (*c*) of the illustrations of ground (1) has been omitted in accordance with the changes already introduced in section 19. The criticisms which have been passed upon clause (*c*) of the illustrations of ground (2) seem to show that, although the principle of the clause is manifestly just, the wording of it is capable of improvement. It does not seem to be understood that the clause is not intended to apply to cases in which the lands are let at a certain rate per beegha, but only to cases in which a holding within definite boundaries may have been let at a lump sum, though the area, or supposed area, may be incidentally mentioned in the agreement. In Explanation I it has been suggested that a Hindu widow, or a ghatwal, is not "a person with a permanent transferable interest." The words "or an interest not less than a life interest" have accordingly been added. Explanation III has been omitted from this place, as belonging more properly to the procedure chapters of the Bill.

Section 23.—This section specifies the limitations on enhancement, some of which have already been considered under section 10.

All the provisions of the section are approved by the Bankoorah Local Committee, by the Commissioners of Orissa and Chota Nagpore, and by the Collectors of Dacca, Malda, Burdwan, and Midnapore. The Collector of Beerbhoom would give the landlord only one-fourth, instead of one-half, of the unearned increment, and would not limit the enhancement to double the former rent, but would maintain the limit of one-fourth of the gross produce. Baboo Joykissen Mookerjea disapproves of all the limitations. Raja Promotho Nath Roy thinks it reasonable that the enhanced rent should not be more than one-fourth of the gross produce, and he agrees with the Commissioners that it should not be more than double the old rental, and should, when once enhanced, remain unaltered for ten years. But he wishes the law to fix definitely the actual shares to be received by the landlord and the ryot. The Commissioner of Chittagong approves of the section with the exception of clause (*e*). The zemindars of Chittagong would prefer to retain the High Court rule of proportion. The Collector of Purneah would raise the limit from 25 to 30 per cent. of the gross produce, and would strike out clauses (*d*) and (*e*). The Commissioner of Bhagulpore would give 30 per cent., and would expunge the limitation to double the old rental, and the allowance for road cess. Baboo Surjinarain Singh, of Bhagulpore, complains that no provision is made for cases in which landlord and tenant have jointly contributed to the increase. He generally disapproves of the restrictions, and enters into some details to show how injuriously they would work. Deputy Collector Baboo

Parbuttichurn Roy would restrict enhancement to 50 per cent. over the former rent. Baboo Kishori Lall Sirkar urges that the cost of production is a variable element, and he is therefore strongly in favour of making the rent a share of the net, and not of the gross produce. The Commissioner of Rajshahye would strike out clauses (*b*) and (*c*). The Collector of Dinagepore, on the contrary, considers 25 per cent too high a rate, and says that the zemindars whom he has consulted would be willing to take less. He thinks that old ryots of 30 or 40 years' standing should be allowed specially favourable rates. The memorial from the ryots of Howrah condemns the section altogether, on ground that the settlement of 1793 was intended to fix the rates of rent in perpetuity, and to leave no power of enhancement to the zemindars. The Behar Landholders' Association disapprove of the limitations, but the examples they give only serve to show that when a landlord has already got more than his fair share, the section will prevent any further enhancement. The Judge of Tipperah thinks the limitations will prove of great service, but the Judge of Patna sees no reason for the rule that the enhanced rent shall not be more than double the old rent. The Moonsiffs of Gya think that the landlord should get one-third of the gross produce. The Moonsiff of Patna objects to the rule that the ryot shall get half the unearned increment. The Second Moonsiff of Contai (Midnapore) thinks it will be impossible to determine the data for the apportionment of the increment. He approves the remaining clauses of the section, except the limitation to 25 per cent., which he considers too low. The Subordinate Judge of Moorshedabad would give the landlord the whole of the increase due to natural causes. The Moonsiff of Berhampore thinks the rules and limitations too numerous, and not always consistent with each other. The Eastern Bengal Landholders' Association consider the limitations to be unnecessary and unjust. They think the landlord should obtain the whole of any increased value, or that at any rate the ryot's share should not be more than one-sixth. The different limitations will combine to give the landlord whichever is the lowest amount according to the provisions of the three clauses (*a*), (*b*), and (*c*), and even then clause (*d*) will allow the increase to be distributed over five years. The Collector of Shahabad thinks that the reference to prevailing rates requires fuller explanation. The object of the rule was to enforce established custom against individuals, whereas it is now used to break down really prevalent rates by raising them till they approximate to exceptionally high rates paid by a few tenants. The remarks of the Collector of Sarun on this clause are to much the same effect, and he adds that it will be extremely difficult to prepare a list of prices under clause (*c*), as the bazar rate is much higher than the rate at which the ryot sells his produce on the spot.

In clause (*a*) logical consistency certainly requires that when the increase has taken place otherwise than by the agency of the landlord or the ryot, the landlord should be entitled to one-fourth of the benefit only. If the landlord is to be limited to one fourth of the gross produce, there is no reason why he should get half of the unearned increment. But it has not been thought necessary to make any alteration in the Bill.

There is no doubt much force in Baboo Kishori Lall Sirkar's argument in favour of basing rent upon a share of the produce. But the Baboo has perhaps not sufficiently considered that what is required is a rule which shall be not only theoretically fair, but practically workable. To ascertain the gross produce will be comparatively an easy task, but to determine the net produce would involve a number of intricate calculations, varying with the different circumstances of almost every particular holding. It must be perfectly clear that the duty could not be undertaken by the executive, and that it would have to be left to the courts: and it is not the desire of the Government to throw upon the courts a task which would certainly impede, and would probably defeat, any claims to enhancement which the landlords might bring forward.

Modifications have been introduced in clauses (*c*) and (*d*) in correspondence with the changes already accepted in sections 10 and 19.

Clause (*e*) has been much objected to, but the principle of it seems to be perfectly just. The sum which a ryot has paid for road cess may fairly be looked upon as his contribution towards the increased value. At the same time, it may perhaps be said that this is one of those little things which the law need

not regard. In the illustration given in the Bill, it would make very little difference to A whether he paid Rs. 11-12 or Rs. 12. Though, therefore, the abstract fairness of the clause is hardly open to dispute, it has not been thought necessary to retain the provision in the revised Bill.

Section 25.—Upon this section Baboo Joykissen Mookerjea makes the remark that an occupancy ryot can have no claim to abatement under clause (1), because, if he does not like to pay the rent, he can relinquish his holding.

It is to be noted that in this section the words "and not otherwise" are new. Under the law, as it stands, claims to abatement are not limited to the specified grounds.

The section appears to be imperfect, in failing to state distinctly that the converse of the rules and illustrations regarding enhancement shall apply to claims to abatement. Words have now been added to make it clear that this is intended.

The provisions of Chapter IV have been universally disapproved, and the entire chapter has been omitted from the revised Bill. But it must be understood that this omission has only been possible in view of the wide definition of an occupancy ryot which has been adopted in Chapter III. If the right of occupancy is conceded to all resident ryots, it is unnecessary to make special provision for the case of ryots who have held for more than three years.

Chapter V of the Bill has elicited very few comments. Baboo Joykissen Mookerjea would give the landlord power to evict without the intervention of the court; and the Collector of Beerbhoom would allow summary ejectment by the Collector in the case of a ryot holding over without leave after the expiry of a certain term. The Commissioner of Bhagulpore and the Collector of Purneah would make a notice to quit equivalent to an order of the court for ejectment, and would throw upon the ryot the onus of suing to set it aside. The Collector of Beerbhoom objects to the rule which requires the notice to set forth the grounds of enhancement. The Collector of Purneah and Baboo Surjinarain Singh of Bhagulpore object to the proviso that the enhanced rent shall not be more than double the former rent. The Eastern Bengal Landholders' Association think that the notice to quit should be served in the same manner as is provided in clause (3) of section 79 for the notice of relinquishment. They object to the limitation of increased rent to double the former rent. The Judge of Cuttack suggests that non-occupancy ryots who have held for six years should be entitled to a three years' notice to quit.

It will probably be admitted that it is not desirable to encourage ejectment, and that it would not be carried out except under a decree of court, nor does it appear advisable to require the ryot to sue in order to set aside a notice to quit. The court should be set in motion by the party who requires the assistance of the law. On the other hand, there seems no necessity for setting forth the grounds of enhancement in the notice. The landlord may admittedly enhance at his pleasure, and to require the grounds of enhancement to be specified only leaves a loop-hole for technical and frivolous objections to the sufficiency of the notice. The proviso that the enhanced rent shall not be more than double the old rental is new, but it cannot be said to be unreasonable. By the present law, the ryot who elects to remain in possession after the receipt of notice of enhancement, cannot be compelled to pay more than a fair rent: and it may very well be contended that an enhancement of more than 100 per cent. would not be a fair rent.

Some verbal alterations have been made in the chapter: the provision requiring the grounds of enhancement to be specified has been omitted: and a section has been added to regulate the rent payable by an under-ryot, in accordance with the suggestion already put forward under section 19. The Collector of Beerbhoom states that in that district the rent of an under-ryot is usually 3 annas in the rupee above that of the occupancy ryot under whom he holds: but it has been thought that this limit would be too low to prescribe as a general rule, and the limit has therefore been fixed at 4 annas in the rupee.

Sections 36 to 42.—This chapter deals with the question of the use of land for building purposes. It is discussed in paragraphs 108 to 113 of the Report.

The Behar Landholders' Association strongly disapprove of the chapter, but their remarks are in some measure founded on a misapprehension. They

think that sections 38 and 39 will lead to much litigation. They observe that leases of lands used for building are not at present transferable, except on payment of a *salami* to the landlord; but that they will be made transferable by section 41, which is retrospective in its operation. The fact, however, is that the section is not retrospective, though it applies to existing leases. They consider 5 per cent. in section 42 too low a rate. The Collector of Burdwan approves the chapter, but thinks 5 per cent. too low a rate. The Collector of Beerbhoom remarks that the permission in section 36 to build a pucca house is an innovation and thinks that a fixed time should be specified in section 39. The Local Committee of Bankoorah agree to 5 per cent., though one of the District Moonsiffs would reduce it to 4. The Collector says the chapter is open to criticism, and thinks it should not extend to trading villages or towns. The Government Pleader of Midnapore remarks that at present a ryot may not erect a pucca house without the leave of the zemindar. He would not alter this, and the Collector agrees with him. The Collector of Hooghly would make section 41 retrospective, as he thinks it desirable to encourage the erection of good houses. Baboo Joykissen Mookerjea remarks that a ryot can always get building land by applying to the zemindar. He thinks that people should be left to settle these matters among themselves, and the Collector of Bhagulpore expresses very much the same opinion. The Commissioner of Burdwan thinks the provisions of the chapter just and equitable. The Commissioner of Chittagong considers that the chapter is not required. The zemindars of Chittagong object to the chapter altogether, and remonstrate against 5 per cent. as too low. The Commissioner of Rajshahye would strike out sections 41 and 42. The Collector of Dacca gives a general approval to the chapter. The Collector of Furreedpore thinks the objections urged are founded on misapprehension, but sees no necessity for legislation. The Collector of Backergunge remarks that section 41 is a novel provision, and that it seems beyond the province of the Bill. Baboo Parbuttichurn Roy objects to section 41 as not sufficiently protecting present occupiers. Rajah Promotho Nath Roy, whose remarks upon the chapter deserve consideration, thinks that 12 years should be substituted for the two years given by section 40. He remarks that he would not object to giving the occupancy right to non-agricultural villagers, such as milkmen, fishermen, &c., but he has the strongest objections to extending the right to shopkeepers. The sections will have the effect of encouraging quarrels about rival hâts. The Commissioner of Orissa believes that the use of building land may be left to be regulated by contract. He disapproves of sections 38-40, which seem calculated to encourage a ryot in wrong doing. In section 42 he would fix the percentage at 8 per cent. The Collector of Purneah makes very similar remarks. The Judge of the 24-Pergunnahs would provide a term of 21 years in section 41(*a*), and would give 10 per cent. in section 42. The Commissioner of Bhagulpore asks how section 41(a) will work in the case of existing leases with more than 12 years to run. He would give not less than 8 per cent. in section 42. Baboo Surjinarain Singh, of Bhagulpore, would leave the matter to be regulated by contract. He objects to the ryot being rewarded for his misconduct, and thinks that the expression "market value" in section 42 is not sufficiently clear. The chapter is fully approved by the Judge of Sarun. The Judge of Tirhoot thinks it generally good, but he would raise the limit in section 42 to 7 or 8 per cent. The Judge of Jessore thinks that ryots who build houses should be protected from arbitrary eviction, and should have rights of occupancy as in agricultural lands. The Second Moonsiff of Burdwan says that the provisions for the protection of a ryot who builds for the use and occupation of himself and his family are important and necessary. The Subordinate Judge and Moonsiffs of Gya, on the other hand, think the greater part of the chapter unnecessary, though they consider that a tenant should not be ejected from building land. They consider the percentage in section 42 too low. The Moonsiff of Berhampore looks upon section 41 as an unwarrantable encroachment on the rights of property, and would raise the rate in section 42 to 10 per cent. But the Second Moonsiff of Bogra thinks that sections 36 and 41 will do much good, and supply a long-felt want. The Subordinate Judge of Moorshedabad is of opinion that the matter should be strictly regulated by contract, and that the chapter should be omitted. The Collector of Shahabad considers that

rights of occupancy should not be allowed in building or other non-agricultural lands. The district zemindars deprecate any change in the existing law on the subject. The Eastern Bengal Landholders' Association would strike out the whole of the chapter. They urge that the homesteads of cultivating ryots are sufficiently protected by the definition of "bastoo" in section 3, and that occupancy rights should not be given in lands, in towns, or bazars They would fix the maximum in section 42 at 9 per cent. if the chapter is retained at all.

The general current of opinion is thus unfavourable to the retention of the chapter, or at least of a considerable portion of it. It is true that some of the objections rest upon misapprehension Those who consider 5 per cent. in section 42 too low a rate, and wish to raise it to 8 or 10 per cent., cannot have taken the trouble to understand the proposal they are criticising. The market value is the price which the land will fetch when sold. If this amounts to 20 years' purchase (and there can be no doubt that it would amount to at least this), it is clear that $\frac{1}{20}$th of the purchase-money represents the annual value, and this is what the section proposes to give to the landlord. But, though there is really no valid objection to this provision, there are some parts of the chapter to which reasonable exception may be taken. The mention of a brick-built house in section 36 appears unnecessary, as it is believed that a ryot hardly ever builds a pucca house without first securing a permanent lease of the land. Sections 37 to 40, though perhaps not in themselves inequitable, are capable of misuse, and might lead to fraudulent and collusive transactions between a ryot and the agent of the zemindar. On the other hand, the provisions of sections 41 and 42 appear necessary for the protection of non-agricultural villagers, a protection which, it may be remarked, has already been given by Regulation XLIV of 1793, and by the Sale laws of 1841 and 1845. But the Government never intended that these sections should apply to town lands, and this has been made clear in the present draft.

The chapter has been amended by striking out the reference to a brick-built house in section 36, by the omission of sections 37 to 40, and by the insertion of words which exclude lands within the boundaries of municipalities from the operation of sections 41 and 42.

Sections 43 to 45.—The comments offered upon this chapter are generally in favour of the proposals. The Collector of Backergunge remarks:—"The principle is a thoroughly sound one, and will be a great boon to purchasers, who now find themselves met by the old proprietor appearing as an osat-talookdar or nim-howladar, and continuing to collect rents from the ryots. But the Bill does not provide for the fact that these subordinate tenures are usually held *benami* in the name of some dependent or relative." The Collectors of Furreedpore and Mymensingh make similar remarks. The Government Pleader of Midnapore observes:—"The chapter on Merger is the best of all the provisions of law in the Bill, and I fully agree in every section of it." The Commissioners of Burdwan, and the Collectors of Purneah, Rajshahye, Pubna, and Maldah, approve the chapter. The Collector of Burdwan remarks that a term of three months from the commencement of the Act should be allowed to meet cases in which the same person owns the estate and tenure at the time of the passing of the Act. The Commissioner of Bhagulpore notices that the converse case (that of the owner of a tenure becoming the proprietor of the estate) is not provided for. Baboo Surjinarain Singh of Bhagulpore makes the same remarks, and thinks the term of three months too short, in which the Collector of Bankoora concurs. The Collector of Shahabad thinks the chapter out of place and unnecessary. The Judges of Sarun, Tipperah, and Tirhoot approve the principle of the chapter and most of the details, but the Judge of Patna considers that it is not wanted, and the Judge of Jessore would be sorry to see the doctrine of merger introduced in any shape. The Subordinate Judge of Burdwan does not see the use of the enactment, but the Moonsiff of the same district thinks it will meet with universal approbation. The provisions of the chapter are approved by the Subordinate Judge of Moorshedabad and by the Second Moonsiffs of Bhanga (Furreedpore) and Contai (Midnapore). The Moonsiff of Patna thinks it improper for Government to exclude by section 45 its own tenants from the provisions of the general law of rent. The Eastern Bengal Landholders' Association remark that the principle of merger is unknown in the mofussil, and that it will take some time for people to become

acquainted with it. They think the term of three months in section 43 too short, and consider that section 45 is out of place in the Bill. The Commissioner of Rajshahye thinks the chapter unnecessary, and Baboo Joykissen Mookerjea considers that it should be left out altogether, as it involves flagrant injustice to landholders, defaulters, and purchasers. But the remark with which the Baboo commences his observations shows that he is unacquainted with the provisions of the existing law on the subject to which he refers. The Behar Landholders' Association observe that section 45 will make a serious change in the status of ryots in khas mehals, who will be excluded from the protection given to tenants, and be left at the mercy of the Executive. But it seems to have been overlooked that section 45 is merely declaratory, and enacts nothing new.

Two slight alterations will be found in the chapter: the necessity for which has been pointed out in the remarks quoted above. It does not appear that the period of three months need be extended, nor that special provision can be made in the chapter to meet the case of tenures held *benami*. The rules in the next chapter, regarding registration, will, it may be hoped, in some measure remedy the evil complained of. No further change has been made: but it should be added here that the Lieutenant-Governor is disposed to doubt the propriety of extending the principle of merger to occupancy holdings. The effect of the chapter as it now stands would seem to be that, if any occupancy holding comes into the hands of the proprietor of the estate by purchase, resignation, or any other cause, the proprietor may treat it as khamar land, in which no occupancy right can be acquired in future. Such a conversion of ryottee land into khamar seems opposed to the tenor and spirit of the old Regulations, which contemplate the village lands being let by the proprietor, and not retained by him as his private demesne. The question is therefore reserved for further consideration.

Sections 46—54.—This chapter deals with the registration of tenures and holdings. The question is discussed in paragraphs 116 to 122 of the Report of the Commission. The sections are generally regarded with favour, though several officers express serious doubts whether it will be practicable to carry them into effect.

The Collector of Backergunge would allow the landlord to object to a transfer, in order to check a fraud which is now said to be not uncommon, by which a ryot makes a fictitious transfer of his holding to a rival landlord, and gets it back from him under a higher title or under more favourable conditions. The Collector of Maldah thinks the power of attachment a dangerous one to give, and suggests that if the landlord refuses registry, the Collector should be authorized to register. The Commissioner of Chittagong would transfer the duty of registration from the landlords to the Rural Sub-Registrars, and the Bankoora local Committee make a similar proposal. It is generally thought that the period of three months in section 46 is too short, and opinions are expressed by some that no fee on transfer should be allowed. The Government Pleader of Burdwan, with whom the Collector agrees, objects strongly to the forfeiture clause of section 51. He would allow the landlord to take possession only under an order of Court, and would give the tenant a month's grace after the service of the order. The Commissioner of Rajshahye thinks the fee specified in section 47 too low, and would prefer to leave the amount to be regulated by local custom. The Commissioner of Orissa says it is not clear whether the transferer or the transferree is to pay the fee. He thinks it should be paid by the former. He asks what the landlord is to do if he doubts the fact of the transfer. The Commissioner of Chota Nagpore fears that section 51 will be abused to destroy occupancy rights. The Judge of Jessore disapproves of the power given by section 51 to attach an occupancy holding. The penalty of forfeiture in the same section is objected to by several Judicial Officers. The Moonsiff of Patna thinks that succession fees should be abolished, but some other officers consider that the fee allowed by the Bill is inadequate. There is a general opinion that the copy referred to in section 54 should be *primâ facie* evidence of the transfer. The Eastern Bengal Landholders' Association consider that a fixed term of one year should be provided in section 51, and that an appeal should be allowed from the Judge's order under clause (*c*) of section 53. The Collector of Shahabad remarks that registration

in the landlord's office assumes a state of things which does not really exist, and that the provisions of section 51 will work very oppressively to the ryot. The Collector would leave successions to holdings unregistered, and would have transfers of tenures registered at the Registration Office. The zemindars of Shahabad approve the proposals of the Bill, as being in accordance with existing custom. The Collector of Mozufferpore thinks one year too short a time in section 51, and remarks on section 52 that the damages should be 20 per cent. on one year's rent, whether pecuniary loss has resulted or not.

It seems inevitable that the duty of keeping these registers should remain in the hands of the landlords, as it would probably be impracticable for Government to undertake it, in either the Revenue or the Registration Department. So far as tenures are concerned, it may be hoped that a tolerably accurate register will be provided and maintained, but it seems doubtful whether any law will be strong enough to do the same for occupancy holdings, and for this reason the forfeiture clause of section 51 is open to very serious objection. The Bankoora local Committee appear to be mistaken in regarding the transfer fee as an illegal *abwab*. The law has already recognised it in the case of patni talooks, and it seems reasonable to extend the principle to other transfers, so long as the amount of the fee is regulated by law. If, indeed, the amount were left to be determined by custom or by the landlord's pleasure, there might be a danger of the fee being used as a means of extortion, or of undue restriction of the right of transfer. It does not seem necessary that the law should declare by which party the fee is to be paid. It will be paid by the person who is anxious to have the transfer registered, and this will sometimes be the transferer and sometimes the transferee.

In accordance with the remarks made under section 20, a section has been introduced to provide for the case of a landlord objecting to register the transfer of an occupancy holding by private sale. The term of three months in section 46 has been extended to six months. A slight modification has been made in the wording of section 47, in accordance with a suggestion of the Collector of Burdwan, who remarks that men of the ryot class cannot understand a rate of so much per cent., whereas a rate of so many pice in the rupee is quite intelligible to them. In section 48 (*c*) it has been thought better to prescribe a fixed period in lieu of the vague expression "a reasonable time." The concluding words of section 51 have been altered, and it has been provided that the landlord must proceed under an order of the court. Section 53 (*a*) has been modified in accordance with the remarks made in the Report of the Commission, so as to extend to all permanent tenures and under-tenures the provision of the patni sale law, which allows the landlord to require security. It does not seem necessary to extend the rule to occupancy holdings, as here the power of distraint will be a substantial security. In clause (*c*) of the same section, the words "civil court" have been substituted for the words "District Judge." This change appears to be required in view of the great extension of the rule which it is proposed to give by this section. The matter is one which can be adequately dealt with by the local court, and it would be a hardship to a tenure-holder at the other end of the district to have to apply to the Judge. Lastly, it has been thought desirable to provide that, in the case of small landlords who are not of sufficient importance to have a form of register prescribed for their use, the acceptance of rent from a transferee shall be deemed equivalent to the registration of the transfer.

Sections 55-56.—The Behar Landholders' Association think that the instalments proposed will not suit bhaoli lands in that province. This question does not really arise, as it has been ascertained that special dates will have to be prescribed for Behar. The Commissioner of Orissa doubts the wisdom of fixing instalments. Existing custom provides the dates which are most convenient to all parties, and the improvident ryot will spend all his money before quarter-day comes round. The Commissioner thinks it unfair that the landlord should lose his interest because the tenant was unavoidably prevented from paying, and the Commissioner of Bhagulpore agrees in this. The Collector of Beerbhoom considers the proposed instalments convenient. The Collector of Shahabad disapproves of fixing dates by law and believes that there is no hardship which calls for interference. The Judge of Patna expresses a similar

opinion; but the Second Munsif of Bhanga (Furreedpore) thinks quarterly kists a great improvement on monthly instalments, which are used by zemindars as a means of harassing the ryots. The same view is taken by the Munsifs of Pubna and Berhampore.

There is perhaps some reason in the remarks that the exception at the end of section 56 is hard upon the landlord, and the words have accordingly been omitted in the draft Bill (II).

Section 57.—The Commissioner of Chota Nagpore approves section 57, but the Manbhoom local Committee consider the provisions too elaborate. The Commissioner of Orissa thinks the section a hardship to small landlords, and that it is out of the question to suppose that it can ever really be enforced. The Judge of the 24-Pergunnas would give the Board power to prescribe forms of receipt in the same manner as they may prescribe forms of register under section 54. The zemindars of Chittagong complain of the difficulty of complying with the section, and Baboo Surjinarain Singh of Bhagulpore makes a similar remark. The Collector of Furreedpore believes that far more stringent provisions are necessary to enforce the giving of receipts. The Judge of Tirhoot thinks the section excellent, but the Judge of Purneah considers its practicability doubtful. The Subordinate Judge and Munsifs of Gya would not require any statement of account to be given, but would have the ryot's jumma and the area of his holding entered in each receipt given to him. The Munsif of Buxar (Shahabad) urges the necessity of specifying in the law the system of accounts which the zemindar must keep, and of having the principal papers filed in the Collector's office. The Second Munsif of Contai Midnapore) objects that clause (*c*) will press with great severity upon small landholders, but thinks the section otherwise very beneficial. The Collector of Patna believes that it will practically be impossible to insist on the use of counterfoil receipts. The Collector of Shahabad remarks that the real evil to be remedied is the omission to specify the instalment for which the rent is paid. The Collector of Mozufferpore is of opinion that the provisions of the section are objectionable, and constitute an improper interference with a landlord's private affairs. The scheme would only be feasible if all receipt books were supplied by Government duly numbered, and this is manifestly impracticable. On the other hand, the Judge of Cuttack thinks that the Government might with advantage undertake to furnish receipt cheque-books, and remarks that this is done in the Khordha khas mehal, and that the practice has been found to work very well.

No reference is made in any of these reports to the danger which is latent in that portion of the section which declares that the landlord must keep a counterpart of the receipt. The courts would accept these counterparts as evidence (or at least as *primâ facie* evidence) of the rent paid. There would not be the least security that the body of the receipt would correspond with the counterpart; and the counterpart would generally be preserved, while the receipt would often be lost. To an unprincipled zemindar who wished to break down a tenure claimed to be held at fixed rates, this system of counterpart receipts would be a great assistance. Clause (*c*) would be a serious inconvenience to small landlords, and in practice it would be found impossible to enforce the observance of it. The receipt ought to specify the name of the tenant who is registered in the landlord's serishta, but what is really of most importance is that it should specify the instalment and year on account of which the payment is made. The penalty provided by section 88 will be quite insufficient to secure this, and words have accordingly been inserted (in accordance with a suggestion made by the Collector of Shahabad) providing that any receipt which does not contain the particulars specified in clause (*a*) and the name of the registered tenant, shall be deemed to be an acquittance in full of all demands of rent up to the date on which the receipt was given. The words which require the landlord to retain counterparts of receipts and annual statements have been omitted.

Sections 58-61.—The regulations of the existing law regarding the deposit of rent are somewhat extended by these sections, but are not materially varied, except by the provision that rent may be deposited in the Collectorate.

The Behar Landholders' Association think that section 58 (*c*) will lead to endless complications, and will place the zemindar at the mercy of

the ryot. Similarly, the Collector of Beerbhoom enquires who is to be the judge of the *bonâ fides* of the ryot. The transfer of deposits from the Civil Court to the Collector is not approved by the Collectors of Backergunge and Mymensingh, who remark that moonsiffees are far more numerous than treasuries. The provision which requires the landlord to pay the costs of the notice under section 61 (*b*) is objected to in several quarters, and an opinion is also expressed that the period of fifteen days in that section is too short. Rajah Promotho Nath Roy thinks that posting a list in the Collectorate will be utterly useless, and that the notices should be served through the police. The Commissioner and Collector of Burdwan are strongly in favour of doing away with the rule which requires tender before deposit. The Collector of Hooghly makes the same recommendation. The Judge of the 24-Pergunnahs would allow deposits in all cases, whether a tender has been made or not, but he would require the tenant to specify the person to whom the rent is payable, and he would make the tenant ordinarily pay the cost of the notice. The Commissioner of Rajshahye thinks section 59 excellent, but he objects to the transfer of deposits to the Collector. The Eastern Bengal Landholders' Association remark that the sections should be made applicable to cesses as well as to rent. The Collector of Shahabad would retain the present system of making deposits in the Civil Court. The Collector of Patna observes that, as a matter of fact, a ryot does not make a tender before depositing his rent. The Judge of Tipperah would not require the ryot to make a declaration, and the Judge of Tirhoot thinks that some of the provisions of the sections place too much power in the hands of the ryots The Second Moonsiff of Burdwan considers the sections a valuable improvement, but urges that notices of deposit should be served individually on landlords. The Subordinate Judge and Moonsiffs of Gya are of opinion that the cost of serving the notice ought not to fall on the landlord, and a similar remark is made by the Second Moonsiff of Contai (Midnapore) and by the Moonsiff of Rungpore. The Moonsiff of Bogra thinks the precautions against the abuse of the right of deposit insufficient, and recommends that a notice should be served before the deposit is made.

It is not desirable greatly to encourage the practice of depositing rent. A tenant ought to know, and usually does know, what he is liable to pay, and to whom he is liable to pay it. The fact that there are more moonsiffees than treasuries is rather a recommendation of the change which the Bill proposes. On the other hand, there can be no doubt that the rule which requires the ryot to make a solemn affirmation that he has tendered his rent, and that it has been refused, has a most mischievous effect. It is notorious that this solemn affirmation is a mere sham, and that almost every case of it is a case of perjury. It would be better to allow the ryot to deposit his rent whenever he believes that the landlord would not be willing to accept it. But if this were done, it would be manifestly unfair that the landlord should pay the cost of the notice. The ryot should therefore be required to deposit with his rent a fee of eight annas, and the notice should be served free of charge. This fee will be sufficient to cover the cost of serving the notice, because, in many cases, the landlord will take the deposit from the Collectorate without the issue of any notice at all. The law should declare that the deposit must be made within fifteen days from the date on which the rent fell due, and that it must include all interest due at the time of the deposit.

In the draft Bill (II), the sections have been revised in accordance with the above remarks.

Section 64.—The Judge of Purneah thinks the section useful and important, but the Judge of Patna does not see why the landlord should be debarred from arresting the debtor or attaching his movables, before selling the tenure or holding. Several officers express decided approval of the abolition of the law of distraint, but others urge that the zemindars are thus deprived of the only means they had for the easy recovery of rent. The Subordinate Judge and Moonsiffs of Gya are of opinion that the section is fundamentally wrong, and that, so far from the sale of the holding being the first process, the landlord should not be permitted to proceed against immovable property till he has exhausted the movables. The Subordinate Judge of Burdwan thinks it objectionable to sell holdings instead of ejecting the tenant. The scheme puts mere ryottee holdings on a level with permanent transferable tenures. The Eastern

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Bengal Landholders' Association believe that in many cases the sale of the holding will not satisfy the arrear. They would leave the landlord an option to put up the holding to sale, or to realize the rent by the other processes allowed by the Act. The Collectors of the Patna Division are all of opinion that the abolition of distraint will make it impossible for landlords to realize their rents. The zemindars of Shahabad and Messrs. Burrows, Thompson, and Mylne of Beheea, make a similar representation. The Collector of Sarun considers that to require the landlord to proceed first against the holding will be injurious to the interests of the ryots.

The Government has already determined that some form of distraint shall be retained, and a chapter on this subject has been inserted in the revised Bill. Whether it is expedient to compel the landlord to sell an occupancy holding before resorting to any other means for the recovery of his rent, is a question upon which the arguments seem to be very evenly balanced. On the one hand, it may be said that the landlord would rather not change his tenant, if he could avoid doing so, and that it is a hardship to the ryot to lose his holding, when the decree against him might be satisfied by his movable property being taken in execution. On the other hand, it may be urged that it is best for all parties that a ryot who cannot pay his rent should give place to a more substantial or more provident cultivator. It has not been thought necessary to alter the section: but it should be understood that the Government has not yet decided in its favour, so far as it relates to the holdings of occupancy ryots.

There appear good grounds for adding after this section the passage given in paragraph 133 of the Report. It may reasonably be argued that the landlord ought to have a priority over other creditors. The point is noticed only by the Government Pleader of Burdwan, who objects to the addition on the ground that it will make the decree-holder merely an agent for the recovery of the landlord's rent. It will perhaps be thought that there is not much force in this objection.

Sections 65—70.—The provisions of this chapter are warmly approved by the great majority of Government officers, but non-official opinion is decidedly opposed to them. The Collector of Backergunge thinks the sections will involve the Government in much litigation, and the Commissioner of Chittagong says that they will be felt as a hardship in his Division. On the other hand, the Commissioner of Burdwan considers them most excellent and beneficial to all parties, and similar opinions are expressed by the Collectors of Midnapore, Maldah, Dacca, and Furreedpore; by the Commissioner of Rajshahye, and by the Collectors of Rajshahye and Pubna. Baboo Surjinarain Singh of Bhagulpore thinks the provisions of the chapter uncalled for, and remarks that one co-parcener ought to be allowed to measure and enhance if his collections are separate. Baboo Joykissen Mookerjea considers the remedy proposed in the chapter to be worse than the disease. The zemindars of Chittagong say the chapter is not necessary, and the Behar Landholders' Association strongly object to it, as tending to reduce landholders to the position of mere annuitants. The Judge of the 24-Pergunnahs remarks that the subject is difficult to deal with, and should be allowed to stand over for the present, as, from the tendency of recent decisions, it appears that the evils of co-parcenership have a fair chance of being remedied without legislative interference. The Eastern Bengal Landholders' Association criticize the proposals of this chapter in some detail, and find nothing in them to approve. They think that the sections will take away the independence of landlords, and reduce them to the position of annuitants. They point out that even if the sharers have all along collected separately, the wording of section 65 will compel them to adopt joint management. They consider that section 70 should not apply to the cases excepted in section 69. The Collector of Mozufferpore considers the chapter generally good, but objects to the proposed management by the Court of Wards. The zemindars of Shahabad disapprove the proposals. The Collector of Shahabad would omit the chapter, as he believes it is a great mistake to think that quarrels among shareholders are injurious to the prosperity of the ryots. The fact, he thinks, is exactly the reverse. He fears that management by the Court of Wards would become popular, and that disturbances would be created for the purpose of bringing estates under the provisions of the chapter.

Among Judicial Officers, the Subordinate Judge of Burdwan and the Moonsiff of Bogra disapprove the chapter, and the Second Moonsiff of Bhanga (Furreedpore) considers it a direct interference with the rights of property. On the other hand, the Moonsiffs of Berhampore and Pubna believe that it will be gladly accepted by all parties. The Judge of Tirhoot and the Subordinate Judge and Moonsiffs of Gya think that applications should be admitted only when made by a certain proportion (one-half or two-thirds) of the co-parceners or tenants. The Second Moonsiff of Burdwan thinks the sections an improvement on the existing law, but suggests that a single sharer should be allowed to sell a tenant's rights and interests so far as his own share is concerned. The Commissioner of Chota Nagpore would place the decision in the hands of the Commissioner rather than of the Judge; several officers would allow the ryots to move the Court to interfere, and it is thought by many that management by the Court of Wards would not be desirable. The chapter is discussed at some length in the reports by the Collectors of Burdwan and Bankoora.

The objections which have been made to the chapter do not appear to outweigh the arguments employed in its favour by the Rent Commissioners in paragraphs 134 to 136 of their Report. The sections seem likely to be very useful, and even if it should never be found necessary to take action under them, their existence in the Statute Book is calculated to prevent the evils which they are designed to cure. They go very little, if at all, beyond the existing law, though they provide a plain and simple procedure for carrying out the principle of it.

It does not seem necessary to enact in express terms that the ryots, or any proportion of them, may move the Court to interfere, as they will always be at liberty to apply to the Collector. It would of course be undesirable that the law should be set in motion by claimants out of possession, and words have now been introduced to exclude applications of this kind. It has also been provided that, even when a general manager has been appointed for any district, the Judge may, if he thinks fit, appoint one of the co-parceners to be manager. It is presumed that the Judge would exercise this discretion in the case of small estates, on which the payment of a share of the general manager's salary might be a heavy burden.

Section 71.—The Commissioner of Rajshahye and Baboo Parbuttichurn Roy of Dacca object to the wording of the opening part of this section. The passage, however, merely reproduces the existing law: and though it contains a somewhat unnecessary recital, there seems no valid reason for altering it.

Section 75.—Baboo Joykissen Mookerjea observes that a landlord ought to be allowed to measure, even though he is restrained from doing so by an express engagement. He goes on to remark, with more justice, that the provision which prohibits a landlord from measuring lakhiraj land is unjust to proprietors, and leads to many fraudulent claims. Baboo Surjinarain Singh of Bhaugulpore makes a similar representation.

The section of the Bill only affirms what is at present the law, but it may with some reason be contended that the law is a very unfair one to the landlord, and especially to new purchasers. Even a claim to hold land as lakhiraj, unsupported by any proof, is held a valid objection against measurement. If a man has a valid holding of five beeghas of lakhiraj, how is the landlord to know whether he has not appropriated much more, unless he is permitted to measure? It seems an equitable rule that a landlord should be permitted to measure all land which falls within the local limits of his estate, whether it be rent-paying or rent-free, but of course he should not be allowed to resume any lakhiraj which had actually been held rent-free for twelve years. The section has been modified in accordance with this view.

Section 77.—This section has given rise to much discussion. The Commissioner of Chota Nagpore thinks that all trees which are a remnant of the old jungle or are self-sown should belong to the ryot, but he admits that the zemindars do not recognize this right. The Commissioner of Orissa would not allow the ryot to cut down trees. Rajah Promothonath Roy remarks that by custom trees are the property of the landlord. The Commissioner of Burdwan doubts whether ryots should be allowed to dig danks, drain, and irrigate. Works unskilfully executed may do more harm than good, or may

benefit one man at the expense of another. He objects to section 77 (*b*). The zemindars of Chittagong say that section 77 is opposed to the custom of the country. The Collector of Hooghly observes that section 77 has greatly alarmed the zemindars, and that it will doubtless be reconsidered. Baboo Joykissen Mookerjea remonstrates against section 77 (*b*) as a breach of recognized custom, and injurious to the zemindar. In Midnapore the Government Pleader and the Sub-divisional Officers disapprove the section. The Collector of Beerbhoom says that the section is an innovation, as by custom the landlord has a right to one fourth of the value of trees planted by the ryot. In Bankoora the local Committee agree to the section, but the Collector would confine its operation to occupancy ryots. The custom as regards trees is stated to be that the landlord gets one-fourth and the ryot the rest. The Commissioner of Burdwan says that there is great difference of opinion with regard to the section, and that it should not, he thinks, be retrospective. The Subordinate Judge of Moorshedabad thinks clause (*a*) of the section a most salutary provision. Pundit Luchminarain of Lucknow strongly urges the importance of encouraging ryots to make improvements to facilitate irrigation. The Collector of Sarun considers that the matters referred to in the section will be better provided for by custom and prescription than by specific rules of law. The Collector of Rungpore is in favour of the entire section, but the Commissioner of Rajshahye disapproves of clause (*b*). The Behar Landholders' Association declare that in Behar fruit trees by custom belong to the zemindar. The Collector of Monghyr remarks that ryots who plant trees get half the produce, but are not permitted to cut down or sell. The Collector of Purneah says that section 77 (*b*) is entirely opposed to the local custom which is known as "hath-rop," and which has been judicially recognized. By this custom the ryot is entitled to half the produce, but may not cut down the trees. The Deputy Commissioner of the Sonthal Pergunnahs thinks the section revolutionary. The Collector of Bhagulpore says that it uproots immemorial custom. The Commissioner of Bhagulpore observes that there are loud complaints against section 77. It is the universal custom that trees cannot be planted without the leave of the landlord, and that the fruit and timber belong half to the landlord and half to the ryot. The Collectors of the Dacca Division all refer to section 77 (*b*) as an unnecessary innovation, and opposed to the custom of the country.

Those who have objected to clause (*a*) of the section have apparently overlooked the fact that it is adopted, with very little variation, from Act XVIII of 1873. It is a matter of importance to encourage the carrying out of such works as are really agricultural improvements, and the operation of the section is strictly limited to these. It has, however, now been provided that any improvements which are made without the written consent of the landlord shall not bar the landlord's claim to an enhanced rent for the land: and in this form it does not appear that any reasonable objection can be made to the provision With regard to clause (*b*), the evidence appears to show conclusively that the Commissioners were in error in thinking the clause to be in accordance with general custom. The custom appears to vary; in some districts the landlord gets one half, in others a quarter; but his consent seems to be generally required for planting and always (or almost always) for cutting. The clause has therefore been omitted, and the question will be left to be governed by local custom and contract, as at present.

A section to regulate sub letting by an occupancy ryot has been introduced in this chapter.

Section 78.—This section is objected to by Rajah Promothonath Roy, by the Collector of Beerbhoom, and by Baboo Surjinarain Singh of Bhagulpore. It is not noticed in most of the opinions which have been forwarded.

The section must be admitted to be hard upon landlords, and especially upon auction-purchasers In a large estate, it would be impossible for personal notice to be given to each tenant, and the section seems likely to encourage frauds by collusion between the ex-landlord and the tenants. On the whole, it has not been thought necessary to retain this provision in the Bill.

Section 79.—Objections against clause (4) have been urged by the zemindars of Chittagong, by the Government Pleader and Sub-divisional Officers of Midnapore, and by the Behar Landholders' Association. It is difficult to

see the justice of requiring the landlord to wait, and lose a year's rent before he re-lets land which the tenant has ceased to cultivate or pay for. Instead of the words "has been absent from the neighbourhood for a year," the revised Bill has the words "has absented himself from the neighbourhood." If the tenant returns and claims the land, it will be for the Court to determine whether the holding was really abandoned within the meaning of the section. The Eastern Bengal Landholders' Association would extend clauses (4) and (5) to transferable as well as to non-transferable holdings The Collector of Shahabad thinks all the provisions of the section unnecessary, and objects especially to clause (8). The Judge of Purneah, in commenting upon clause (7), would make the institution of a suit for ejectment equivalent to a notice to quit. The Judge and the Subordinate Judge of Sarun consider that the rule of forfeiture for disclaimer will go hard against the ryots: but the Judge of Tipperah approves the clause, and the Judge of Purneah thinks it much required. With regard to clause (8) the Commissioner of Orissa remarks that a deliberately dishonest disclaimer is a fair ground of forfeiture, but that it will be necessary that the rule should be carefully applied. Looking to the general tendency of the decisions of our courts, it need not be apprehended that this clause will be unfairly pressed against the tenant, and there can be no doubt that some provision of the kind is called for. But the term of six months seems too long, and the law ought distinctly to declare that the election of the landlord must be signified by his taking some actual step for the ejectment of the tenant. The clause has been modified accordingly.

Under clause (9) opinions are expressed in several quarters that the period allowed for election, whether leases and tenancies shall be avoided, is too short. There appears to be no force in this objection. The Bill gives a period of one year from the date on which the purchaser has knowledge of the existence of the tenancy. This term is amply sufficient, and on grounds of public policy it is most undesirable that the purchaser should be allowed to keep the sword hanging over the heads of his tenants.

Section 80.—Several officers think the provisions of this section admirable, but the Commissioner of Orissa would not allow the ejected tenant to take the crop. He thinks this would induce tenants to hold over without just grounds. The Collector of Burdwan asks who is to decide what is a "reasonable rent." The zemindars of Chittagong think that the away-going crop should pass with the land. The Commissioner and the Collector of Bhagulpore say that the section will only complicate matters, and that to leave the crop on the land will ensure a better price for the holding; but they have forgotten that the section relates only to cases of ejectment, and not of transfer by sale. The Deputy Commissioner of the Sonthal Pergunnahs condemns the section as revolutionary. The Collector of Beerbhoom otherwise approves the section, but he would not give the landlord power to take over the crop at a valuation. He thinks the crop would probably be ruined while the valuation was being made. The Collector of Monghyr remarks that by local custom in some pergunnahs the ejected ryot is entitled to the crop, in others he is entitled to one-half of it. Baboo Surjinarain Singh of Bhagulpore thinks the section would be injurious. He instances the case of indigo planters, who are said to create much confusion by persisting in holding on after the end of their leases, and he thinks that this section would encourage ryots to act in the same manner. The Judge of Purneah considers the section too favourable to the tenant, who will in general have grown the crop with full knowledge of his liability to ejectment. The Collector of Patna thinks that the section will be used to harass the ryot, who ought not to be charged rent for the occupation of the land. He remarks that the option given to the landlord to purchase the crops should not apply to opium. The Collector of Shahabad approves the provisions of the section.

The section is a valuable and necessary protection to a non-occupancy ryot, and the principle of it appears to be perfectly just. The rent of such a ryot may be enchanced at the pleasure of his landlord; and it may often happen that he will hold on in the hope of being able to come to some arrangement, which will enable him to retain his holding. If he is disappointed in this hope, it is surely a hardship that he should lose his crop as well as the land. To those who think that the section, however fair in principle, will

practically be unworkable, it seems sufficient to point out that the section has actually been in operation in the North-Western Provinces since 1873, and that it has been adopted, with only verbal alterations, from section 42 of Act XVIII of that year.

Sections 81 to 86.—The peculiar circumstances of Behar are discussed in paragraphs 146 to 156 of the Report of the Commission, and Chapter XII of the draft Bill contains the special provisions which the Commissioners considered to be required for that Province. The chapter contains only six sections, and deals with the two questions of the right of occupancy and of rents payable in kind.

In many of the reports which have been received, this chapter is passed over without notice, or with very brief remarks. The Judge of the 24-Pergunnahs (who was formerly Judge of Patna) thinks that the power to commute rent payable in kind should be confined to the ryot. He would allow the ryot to commute on favourable terms, and he suggests that one-sixth of the value of the gross produce would be an equitable money rental. He would limit the maximum money rental payable by occupancy ryots in Behar to one-sixth of the value of the gross produce, and would fix the minimum at one-eighth. Baboo Joykissen Mookerjea objects to section 81 as an encroachment on the proprietary title of the zemindar. The Commissioner of Bhagulpore generally approves the Chapter, and thinks it might be extended to Bengal. Baboo Surjinarain Singh objects to sections 81 and 83, and considers section 86 an arbitrary interference with existing contracts and customs. The Collector of Monghyr disapproves of the proposal in clause (*b*) of section 84, to allow a civil suit to be instituted to set aside the award. He thinks the award should be final. The Collector of Maldah strongly condemns the bhaoli tenure, and would encourage commutations as much as possible. The zemindars of Monghyr object to section 82, and point out that the Rent Commissioners were mistaken in their estimate of the amount of the ryot's share, and in the statement that the ryot gets nothing more than the bare land. The proposed three years' tenure is disapproved by the majority of district officers in the Patna Division. The Collector of Patna thinks it will do the ryot no good. The Collector of Gya regrets that the proposal should have been made. The Collector of Durbhunga does not think it a politic or desirable measure. The Collector of Sarun considers that it should not apply to new tenants, though he would give a right of occupancy to all khudkast ryots in the lands which they hold in the village in which they live. The Collector of Shahabad alone is of opinion that sections 81-82 introduce an excellent rule, which will do more good in Behar than any recent legislation. The Judge of Tirhoot thinks the proposal unreasonable. The Judge of Purneah makes a suggestion to much the same effect as that of the Collector of Sarun. The Moonsiff of Patna considers the sections most objectionable, and the Moonsiff of Berhampore would raise the term from three to six years.

The Judge of Tirhoot considers sections 84-85 excellent, but the Judge of Tipperah remarks that the success of the procedure will depend on the person selected for the duty of valuation. The Judge of Purneah thinks the present system liable to much abuse, and would require suits for rents payable in kind to be brought within three months after the crop is harvested. The Moonsiff of Arrah remarks that section 85 supplies a long-felt *desideratum*, and the Moonsiffs of Rungpore and Bhanga (Furreedpore) suggest that the provisions of these two sections should be extended to Bengal. The Collector of Mozufferpore considers section 84 (*b*) to be impracticable, and that it would be better to adopt the procedure of the North-Western Provinces Rent Act.

The Judges of Purneah and Tirhoot think it doubtful whether it is expedient to allow commutation, and the Judge of Patna considers that the ryot should not have the right to commute. The Subordinate Judge and Moonsiffs of Gya are of opinion that section 86 will have a very disastrous effect. The zemindars of Shahabad express disapproval of section 86. Among the Collectors of the division, the Collector of Patna is strongly opposed to giving any right of commutation except with the consent of both parties. The Collector of Gya believes that the bhaoli system is the best for that

district. The Collector of Shahabad objects to basing the money rent on the average value of the landlord's share, and urges that the only proper standard is to be found in the money rents paid in the vicinity. The Collector of Sarun expresses a similar opinion, but strongly condemns the bhaoli system, and thinks that nothing should be done to prolong its life or mitigate its hardships, while at the same time every facility should be given to either party to exchange it for a money-rent system. The Behar Landholders' Association enter into a detailed argument in defence of the bhaoli system. They urge that it prevents disputes regarding enhancement and distraint: while at the same time bhaoli rents in Behar are really lower than money rents in Bengal, in proof of which they adduce the road cess valuations of the district of Gya. They disapprove generally of the provisions of the chapter, and think that no case has been made out for encouraging the commutation of bhaoli rents.

Whatever may be thought of the arguments of the Association, there can be no doubt of the inaccuracy of their figures. They have overlooked the very material point that (during the year for which their calculation is made) the road cess in Gya was levied at only half the maximum rate, and that the valuation of the district, instead of being something less than 35 lakhs, is really above 70 lakhs. An examination of the road cess returns is sufficient to show that rents in the Patna Division are remarkably high There are only nine districts in Bengal in which the valuation per square mile is as much as Rs. 1,200, and in these it varies from Rs. 2,100 in Burdwan to Rs. 1,210 in Chittagong. In Chumparun, in which the proportion of waste land is exceptionally large, the valuation is only Rs. 742 to the square mile; but in the remaining districts of the Patna Division it ranges from Rs. 1,300 in Shahabad to Rs. 2,760 in Patna. Thus not only does the highest valuation in Behar greatly exceed the highest valuation in Bengal, but in the Patna Division the land in every district (with the single exception of Chumparun) bears a very high average rental compared with Bengal districts. The valuation in Gya, which is selected by the Association as a representative Behar district, is Rs. 1,500 per square mile; in Backergunge, a district far more wealthy and prosperous than Gya, it is Rs. 1,400.

To recommend the bhaoli system on the ground of its preventing disputes regarding distraint, is to ignore the notorious fact that it fosters the practice of a species of distraint far more oppressive and more ruinous to the cultivator than if his crops were attached under legal process. The report of the Behar Rent Committee refers to cases in which the grain is allowed to rot on the threshing-floor or in the field, because the ryot will not agree to the zemindar's proposals for the division or valuation. It may be added that the system operates as a discouragement of the growth of the more valuable crops: indeed, it is rare for any other crop than paddy to be grown on bhaoli lands.

On the other hand, it must fairly be admitted that the system has the support of long-established usage: that it is generally popular: that the tenant gets something more than the bare land, as it is the practice for the landlord to construct and maintain the protective and irrigation works locally known by the name of *gilandazi*, and that the tenant usually receives (besides his share of the grain) the whole of the straw and the chaff. Looking to the economic disadvantages of the system, it appears right than an option to commute to a money rental should be given to the ryot; but it is the opinion of the majority of the local officers that applications to commute will not be numerous.

The provisions of sections 81 and 82 of the draft Bill will not be required, if the suggestion which has been made in Chapter III for the definition of a settled ryot is accepted. The adoption of the simple principle, that the right of occupancy belongs to the resident cultivator, will, in Behar equally with Bengal, make it possible to dispense with all stipulations regarding the actual period of residence, or the occupation of particular lands. But the great extent to which the sub-division of estates has been carried in Behar makes it even more necessary than it is in Bengal to declare that the right shall not be limited by any condition of residence on a particular estate.

With regard to section 83, it has been ascertained that local opinion in Behar is in favor of the view that, where the works known as *gilandazi* are maintained by the landlord, nine-sixteenths of the grain is not an exorbitant

proportion for him to take as his share, and that at all events the case is not of a kind to require interference with existing contracts, or with local custom. The section has accordingly been omitted from the draft Bill (II).

In paragraph 155 of their Report, the Commissioners say that they have accepted in its entirety the recommendation of the Behar Rent Committee which is embodied in section 84 of the Bill. It appears, however, from the proceedings that the Behar Committee unanimously agreed to the adoption of section 41 of Mr. Worsley's draft Bill, which reproduces the provisions of the North-Western Provinces Rent Act (XVIII of 1873). This differs in some respects from the procedure laid down in section 84, and as it is understood that the scheme is found to work satisfactorily in the North-Western Provinces, it has been adopted in the draft Bill (II).

Section 86 gives both the landlord and the ryot a right to commute to a money rental. The President of the Commission, however, was opposed to making commutation compulsory on the ryot, and the great preponderance of local opinion supports this view.

The provisions prescribed for Behar in the draft Bill (II) have been adopted rather as the result of personal communication with the official and non-official residents of the Province, than from any reports which have been formally placed on record. If some of these provisions are thought to be somewhat arbitrary in their character, it should be remembered that the circumstances of Behar are exceptional, that the ryots require an amount of protection which is uncalled for in Bengal generally, and that it is not proposed that the chapter shall apply to any part of Behar in which the Government is satisfied that it is not really required.

The necessity for a definition of zeerat lands has long been felt, and while, on the one hand, it is necessary to put a stop to the forcible appropriation of ryottee lands as zeerat, it is probable, on the other hand, that a specification of the lands which are really entitled to be held as zeerat will be a benefit to the landholders, and will tend to place indigo cultivation on a sounder basis. The definition proposed is considerably wider than that given in section 81, as it includes lands which the zemindar may have leased. It is provided that a survey and register of zeerat lands may be made, and that when this register has been finally approved, no evidence shall be admissible to show that lands not specified in such register are zeerat lands. These sections are generally based on the provisions of the Chota Nagpore Tenures Act of 1869.

Special dates for the payment of instalments of rent have been provided, in accordance with the recommendations of local officers.

The three following sections restrict the right of enhancement, and declare that farmers may not collect arrears or levy an increased rental. It may not be necessary to make the operation of these sections general throughout Behar; but cases have been brought to the notice of Government which show the urgent necessity which exists for retaining a power of this kind in the hands of the Executive. It has been strongly urged upon the Government that enhancement by thikadars ought to be made absolutely illegal in Behar, but it appears reasonable to reserve a power of allowing such enhancement in cases in which the Government is satisfied that it will not be abused. The section which prohibits thikadars from collecting arrears is a necessary supplement to this provision. It would be of little use to forbid enhancement, if the zemindar were left at liberty to lease out a village to a thikadar, with large nominal balances which the zemindar himself was powerless to collect, but which could be used by the thikadar as an engine to compel the ryots to submit to any exactions.

As has been already explained, the scheme for the settlement of *danabundi* disputes is adopted without alteration from the North-Western Provinces Rent Act.

The right to apply for the commutation of bhaoli rents is confined to occupancy ryots. It has been thought desirable to specify the deduction which shall be made in consideration of the risk of cultivation being undertaken by the ryot, and it has been declared that this deduction shall ordinarily be 33 per cent. This deduction will not be thought too large, if it be remembered that, in a good season, the value of the landlord's share of the crop is fully three times as much as he would receive if the lands were let at a money rental. If

however, the ryot elects to commute, he is required to commute the whole of his holding. It would not be fair to the zemindar to allow the ryot to pick out the best fields for a money rental, and to leave the inferior lands under the bhaoli tenure. It is further provided that the landlord shall not be permitted to interfere with the cutting and harvesting of the growing crop on bhaoli lands. It is absolutely necessary to check the grievous abuses which have resulted from the misapplication of the principle that the landlord is a co-proprietor with the ryot in the growing crop. The nominal equality of the two parties really works the greatest injustice, and makes the landlord the absolute master of the situation, as he can afford to wait till the ryot gives in. It is provided, however, that this section, and the section regarding commutation, shall not apply to zeerat lands cultivated on the bhaoli system.

The provisions of this chapter, as now revised, are commended to the consideration and approval of those who recognize the facts that, while the condition of Behar has undoubtedly improved of late years, the Province is still in a backward state as compared with Bengal; that evils exist in it which are fortunately unknown elsewhere, and which call for special remedies; and that while in the rest of the country it is the duty of the Government to hold the balance with an even hand, the ignorance and helplessness of the Behar ryot make it necessary to protect him by safeguards and precautions which are not required for the cultivator in Bengal.

Chapter XIII.—Very few opinions have been offered upon this chapter of the Bill. The Collector of Beerbhoom remarks that the penalty in sections 87 and 88 is so small as to be quite inoperative, and that it would be better if these cases were decided by the Collector. The Commissioner of Rajshahye and the Collector of Purneah think that the award of damages under sections 90 and 91 should be obligatory, and not discretional with the Court. Baboo Joykissen Mookerjea and the Commissioner of Orissa think that both interest and damages should be awarded, and ask why the rate of interest is 6 per cent. in section 90, and 12 per cent. in section 91.

The rule that interest cannot be awarded as well as damages only reproduces what is already the settled law. The damages are, and were intended to be, in lieu of interest. The discrepancy in the rate of interest between section 90 and section 91 is not intelligible, and is perhaps merely due to a printer's error. From paragraph 137 of the Report, it would seem that the Commissioners did not intend to modify the present law. But, from Articles 68-69 of the Digest, it appears that the existing rate in both cases is 12 per cent. It makes, perhaps, no great difference whether 6 or 12 per cent. is fixed upon, but the same measure should be meted to both parties. In the draft Bill (II), a rate of 6 per cent. has been fixed, in accordance with the wording of the Code of Civil Procedure.

In the schedule referred to in Chapter XIV, a few changes of no great importance have been made. The first heading has been omitted in accordance with the change introduced into section 84. Under heading 4, the term has been reduced from six to three months. Under headings 5 to 9, the term has been reduced from one year to six months, in accordance with the recommendations of several officers, who have represented that these cases are really more in the nature of criminal than civil proceedings, and that for genuine complaints a term of six months is an ample period. Some officers, indeed, wish to see the term reduced to three months. On the other hand, it has been suggested that the period of one year, prescribed in headings 13 and 14, is unduly short: and, as the remark appears reasonable, the period has been extended to three years Two new headings have been introduced to provide for the institution of cases to recover damages for illegal distraint, and for refusal to furnish a jummabundi.

One question connected with this schedule is still under the consideration of Government. It has been urged by the Judge of Purneah, that a special limitation ought to be provided for suits for rent payable in kind. When rent (it is said) is a share of a crop, or of the value of a crop, it is unreasonable that a suit for the value of the share should be brought three years afterwards, when it is very difficult to get trustworthy evidence of the value of the

share. It is therefore recommended that the law should declare that such suits must be brought within three months, or at most within six months, after the crop is harvested. The proposal does not appear unreasonable; but the Government is not aware whether the necessity for any change has been practically felt; and it has been thought desirable to ascertain the opinions of local officers upon this point before introducing into the draft Bill any clause to give effect to the suggestion

The chapter on distraint, which has been added to the Bill, materially differs from the principle of the existing law on the subject, Under the present system, the initial steps in distraint are taken by the landlord on his own responsibility, and without the intervention of the Court. But, if the tenant whose property is distrained refuses to satisfy the claim, the landlord may have to wait a long time before he obtains his dues. He must apply to the Court for an order for the sale of the property, and the tenant is allowed time to object to the distress, and to institute a suit to contest the demand.

Whatever may be the case in Bengal, there is no doubt that this procedure has been seriously abused in Behar. Crops have been distrained for enhanced rents, and for rent not actually due when the distraint was made, and the distress has been maintained, without any application being made to the Court, for a much longer period than the law allows, with the object of forcing the tenant into compliance with an excessive or a disputed claim. The Behar Rent Committee were of opinion that if the power of distraint were exercised in strict conformity to the law, it would be of little or no value to the landlord.

The scheme propounded in the draft Bill (II) rests upon a principle radically different from that of the present law. It virtually provides a procedure which (as far as current rents are concerned) will have the effect of a summary *ex parte* trial. Instead of leaving the landlord at liberty to take the first steps, and then hampering and delaying him in the event of the recusancy of the tenant, it provides that he must apply in the first instance to the Court, and must furnish *primâ facie* proof of the justice of his claim. But when such proof has been given, and the Court has issued its order for the distress, nothing but the actual payment or deposit of the claim will save the distrained property from sale.

Whether this plan affords the tenant a sufficient safeguard against unfounded claims, is a matter which deserves, and which will no doubt receive, attentive consideration. If it may be assumed that the Court will exercise a due discretion, and will sanction distraint only after a proper examination of the applicant, and in cases in which satisfactory proof is given of the justice of the claim, there seems no reason why the scheme should not afford substantial assistance to landlords, without involving hardship to tenants. It may at least be reckoned as one of the advantages of the plan that whatever the landlord gets by it will be given him by the law, whereas under the present system there is reason to fear that the landlord finds it more to his benefit to violate the law than to conform to it.

Under Regulation XVII of 1793, landlords were empowered to distrain not only the crops and products of the earth, but the cattle and other personal property of defaulters. This continued to be the law till 1859, when the power of distraint was limited to the produce of the land on account of which the rent is due, and even this produce could not be distrained after it had been stored by the tenant. It is proposed to remove this last restriction, and to allow the crop to be distrained whether it has been stored or not, so long as it has not passed out of the possession of the cultivator.

If the tenant desires to dispute the demand, it is provided that he may pay the amount of the distress and costs to the distraining officer, who will be bound forthwith to deposit the money in Court. Such deposit will be paid to the landlord at the end of one month, unless a suit to contest the demand shall have been instituted in the meantime. The same procedure will be followed, if any person shall claim, as his own, property which has been distrained for arrears of rent alleged to be due from any other person.

When distrained property is sold, it will be the duty of the distraining officer to pay to the applicant for distraint such costs as have been incurred in effecting the sale, as well as the amount of the arrear. In the settlement of these costs, and generally under the procedure prescribed in the chapter, the distraining officer will have to exercise powers which should not be left to his own unguided discretion, and it is therefore provided that rules may be laid down by the Board of Revenue for his guidance. The details of this part of the scheme will require further consideration, as there is an apparent anomaly in allowing the Board of Revenue to prescribe rules for the guidance of an officer of the Civil Court.

It has been declared that a tenant whose crops have been distrained for an arrear due to one landlord, shall not be liable to any other person on account of the instalment of rent for which the distraint was made. It will perhaps have to be considered whether any precautions are necessary to prevent this provision being abused by collusive applications for distraint being made with the privity of the tenant.

If an occupancy ryot sublets without permission, the under-ryot's crop remains liable for the rent due not only to the occupancy ryot, but to the superior landlord. Cases will therefore sometimes occur in which double applications will be made for the distraint of the same crop. To meet such cases it is provided that the distraint shall be for the larger of the two amounts claimed, that the under-ryot may pay the claim of the superior landlord, and deduct it from his own rent, and that, if the property is sold, the superior landlord's claim shall first be satisfied.

The plan proposed in this chapter has not yet been submitted to general criticism; and it may have to be modified in some particulars when opinions upon it are received. The principles by which the Government has been guided in framing the chapter are, that some form of distraint ought to be retained, that distraint should be initiated in a Court of law, and that a more expeditious procedure than that of the present law should be provided. If these principles are accepted, there need be no great difficulty in framing the details by which they can be carried out. It has been made a matter of complaint, that the summary procedure for the trial of rent suits, proposed in Chapter XVIII of the Bill of the Commission, does not give sufficient facilities for the speedy disposal of cases. But, with regard to the class of cases which is most numerous, and in which a prompt decision is of most importance to the landlord—suits for the recovery of arrears of rent—it will perhaps be found that the scheme of distraint which has been introduced into the Bill will prove an efficient substitute for a regular suit.

Chapter XV.—The procedure which the Rent Commission propose for the enhancement of the rents of tenure-holders and of occupancy ryots, is explained in full detail in paragraphs 63 to 100 of the Report. The opinion, however, of the great majority of those who have reported on the Bill is unfavourable to the retention of the alternative jurisdiction proposed by the Commissioners. The abolition of the notice of enhancement, and the substitution of a suit for enhancement, are approved; but it is very generally remarked that the procedure by which the plaintiff, or applicant, is permitted to sue in either the Civil or the Revenue Court, is objectionable. A landlord, it is thought, will select his tribunal according to the known proclivities of the individual officer by whom the trial would be held; and in some districts the Judge, in others the Collector, will be overwhelmed with work.

There is more difference of opinion as to the kind of Court which should be entrusted with the trial of these cases. The Collector of Furreedpore would restrict all action in the matter of what is really a land tax to the executive branch. Baboo Surjinarain Singh of Bhagulpore, and Baboo Joykissen Mookerjea think that Revenue Officers should try enhancement cases, but that the appeal should lie to the Judge and High Court. The Commissioner of Burdwan thinks that the Collector should have entire jurisdiction. The Collector of Hooghly would allow the Collector to decide any general dispute,

but would have isolated cases tried in the Civil Court. Several officers express approval of Mr. Dampier's proposal, that the Government shall determine whether suits shall be tried by the Civil Court or by the Collector; though the Judge of Jessore would allow the transfer to depend on the recommendation of the Judge. But the more general view is that the Collector should prepare a table of rates, and that it should be left to the Civil Court to apply these rates to individual cases. This—which is in effect the second of the alternative courses suggested in paragraph 97 of the Report of the Commission—is supported, with some minor modifications of no great importance, by the Subordinate Judge of Dinagepore, the Judicial Officers of Gya, the Subordinate Judge of Moorshedabad, the local Committee of Bankoora, the Commissioners of Chota Nagpore and Chittagong, and the Collectors of Maldah, Rajshahye, Bankoora, and Burdwan. As to the period for which the enhancement should hold good, the Collector of Purnea would reduce it to five years, but the Moonsiff of Berhampore would raise it to fifteen, and the Collector of Maldah to twenty years. The Eastern Bengal Landholders' Association consider that all suits should be tried by the Civil Courts, that the cost of preparing a table of rates should be equally divided between landlord and tenant, but that the cost of an enhanced jummabundi should fall entirely on the ryots. The Collector of Mimensingh does not think that the cost of a settlement jummabundi should fall on the applicant. The Behar Landholders' Association object to any restriction of an ijaradar's right to sue; but the Moonsiff of Berhampore, on the contrary, thinks that an ijaradar should not be allowed to sue at all.

Some special schemes, which have been proposed for regulating enhancement, seem to call for separate notice. One of these, which has been put forward by Baboo Parbutticlurn Roy, Deputy Collector of Dearah Surveys, in the Dacca Division, is deserving of attention, as no doubt its adoption would greatly simplify the settlement of various questions which the Bill proposes to determine by minute and elaborate enquiries. The following extract is taken from a pamphlet which the Deputy Collector has lately published on the subject:—

"To any one acquainted with the physical features of Bengal villages, the practical difficulties will not appear to be very great. It is not that the different descriptions of land for which different rates are taken by landlords are scattered over the village in an irregular or whimsical manner, but there is a law according to which all the lands of one description are generally to be found together. As a rule, all high lands are in one part of the village, and all low lands in another, or all clayed lands in one place, and the sandy lands in another. This is the general rule, though there are often exceptions to it. It will be found on enquiry that this law applies not only to villages taken singly, but often when taken in groups. Such being the case, the classification of lands similarly circumstanced, according to the character of their soil, becomes practically a matter of not much difficulty. It is true, as the Rent Commissioners report, that a distribution of lands into different classes "according to a more extended or more limited classification, prevails in every estate; and that this is well known to, and well understood by, the ryots." There is not therefore much likelihood of a dispute regarding classification arising between the landlord and tenant in the event of a local enquiry being ordered by Government.

"What is necessary, therefore, previous to the settlement of rates, is that the lands of a particular tract of country, similarly circumstanced, should first be demarcated on the spot, and then maps should be prepared, with the aid of which they could afterwards be identified. With this object revenue officers, who have had not less than ten years' experience in the settlement of Government khas and resumed estates, should be deputed to go over the country, the rates of which are to be settled, and should demarcate on the spot, in the presence of the zemindar's agents and the head ryots of the village, the different descriptions of land in blocks, not according to the crops they produce, but according to their productive powers. As soon as the lands are demarcated, the lines of demarcation will be surveyed with chain and compass, so that they might be reproduced in the thuckbust maps, with copies of which the settlement officers will be supplied from the Collectorate. The settlement officers will be accompanied by a number of surveyors to carry out their orders in the field, and to prepare the contour maps showing the different classes of lands. To secure identification of the several classes in future, permanent landmarks, in the shape of pucca pillars, will be left on the ground at certain distances, and the position thereof accurately shown in the maps. The classification being completed, the settement officers will proceed to fix the rate of rent payable for a standard beegha of each class of land. In doing this, they will consult registered kabulyats and Civil Court decrees, examine witnesses, and hold local enquiries regarding the value of produce per beegha They will also take into

consideration the local advantages or disadvantages, as regards the means of communication, the largeness or smallness of ryotee holdings, and the sparseness or density of population They will then fix the rates they consider fair and equitable, and will report their proceedings to the higher Revenue authorities for confirmation. The landlords and the ryots will be allowed opportunities for objecting to the Settlement Officer's classification of lands and assessment of rates"

The Deputy Collector goes on to show that, from the experience gained in the Dearah Surveys of Eastern Bengal, it may be confidently stated that the experience of carrying out such a classification as he proposes would not exceed Rs 20 per square mile, or about one rupee to each hundred beeghas of area.

It may be doubted, however, whether this scheme can be accepted as affording a satisfactory solution of the question. It might, perhaps, very fairly be applied to any extensive fiscal operation, such as the assessment of revenue on an entire district. Roughly and broadly speaking, it is perfectly true that the different classes of lands—the high lands, the lower lands and the alluvial or chur lands—run in tolerably well defined belts or zones, and that there would be no great difficulty in classifying them by contour lines If the survey were extended to a sufficiently large area, errors of excess would balance those of defect, and the net result would be a fairly close approximation to the truth. But it is a totally different thing to apply such a plan to the rates of particular fields, or even of particular villages. A system, the general fairness of which depends upon the doctrine of averages, must necessarily be unequal in its operation upon particular cases. It might be ascertained that a rate of Re. 1-8 a beegah would be a fair rental for alluvial lands; and yet it might very well be the case that one alluvial holding would be under-assessed at Rs. 2, while another would be too highly rated at one rupee.

Rajah Promothonath Roy would be willing to allow the rents for defined tracts to be fixed from time to time by Government in the form of a certain share of the gross produce, not in any case exceeding one-fourth. He would agree that rent so enhanced should not be more than double the old rent, and should not be again enhanced for ten years. In other words, the Rajah accepts the conclusion laid down by the Rent Commissioners in paragraph 46 of their Report, that the ruling power ought to determine the rents payable in these Provinces by the ryots to the zemindars. Whatever may be the magnitude and difficulty of the task, the duty is one from which the Government should not shrink, if there were any grounds for supposing that such a settlement of the question would be generally acceptable to the landholding classes. But it would hardly be possible for the Government sucessfully to undertake functions of this kind, or even to ask the Legislature for the grant of such extensive powers, in the face of any strong opposition on the part of the zemindars; and there is, unfortunately, no reason to believe that the scheme which the Rajah is willing to accept would be regarded with general favour by the great body of proprietors.

Baboo Joykissen Mookerjea, in a paper which he has laid before Government on the subject, has urged that it is impossible to fix uniform rates of rent for different classes of land, as rates for the same class of land often vary in different fields of the same village. He wishes the revenue officers to prepare a table showing the proportion which the rent now paid bears to the value or the gross produce, and also a table of the various prices of different staples during the last five or seven years. Rent, he thinks, should be enhanced up to the village rate, which, he says, is uniform for each class of lands, a remark which appears inconsistent with his previous statement. If there is a dispute about the rate, the above tables will be a sufficient guide to the Court in determining what the rate should be, the principle to be followed being that of maintaining the previous ratio between rent and gross produce. He thinks it unnecessary to take into account the value of improvements, made by the ryot; for he considers that ryots never make improvements, or, at least, that the improvements which they make are such as to require no outlay of capital

If the Baboo's proposal has been rightly understood, it may be said at once that it is one to which the Government could never assent. In some portions of Hooghly and Burdwan the ratio of rent to gross produce is stated to be as 3 to 5. In some portions of Backergunge it is stated to be as 1 to 40. The system advocated by the Baboo would tend to perpetuate these extreme inequalities; and, while it would give more to some landlords, who already

receive too much, it would prevent others, whose share is at present inadequate, from obtaining the reasonable increase which they are fairly entitled to receive.

The scheme adopted in the draft Bill (II) is that which has already received the provisional acceptance of Government—the establishment of local tables of rates. A landlord who desires to do so will be at liberty to apply to the Courts for enhancement under the conditions of the third chapter of the Bill; the only difference being that the procedure will be by suit instead of by notice, and that the ground on which enhancement is claimed will have to be definitely stated in the plaint. But it is intended to supplement this procedure by constituting local Committees, whose function it will be to ascertain and declare the rents equitably payable by occupancy ryots in certain defined areas. On the publication of the table opportunity will be given for objections to be heard and decided: and the table, when finally approved, will be published in the *Calcutta Gazette*. The Courts will take judicial notice of a table so published as showing the rates equitably payable for the several classes of land within the local area covered by the table: but it will be left to the landlords to enforce the table against their ryots by suit in the Civil Court, and it will be open to any ryot to plead that he is entitled, on special grounds affecting himself, to hold at lower rates than those specified in the table.

Some such plan as this will perhaps be found better adapted than any other to meet the real difficulties of the question. It does not involve the landlord in heavy costs at the commencement of the proceedings. It does not overwhelm the Collector with the labour of the minute enquiries necessary for ascertaining the precise rent payable by each individual ryot. For the purpose of laying down a general rule, it employs the agency of a body which may fairly be expected to be both well-informed and impartial; while it relegates to the most competent tribunal—the Civil Court—the duty of applying the rule to the circumstances of particular cases.

In accordance with this principle, considerable alterations have been made in the draft Bill of the Commission. A clause has been added to section 97, and to the illustrations in section 98, to meet the case of a claim in the Civil Court for enhancement on the fourth of the grounds specified in section 22. Where a table of rates has been prescribed, the landlord will naturally proceed upon the first ground; but where no such table is in force, it seems right that a landlord, who may desire to claim enhancement on the fourth ground, should not be precluded from doing so. Provisions have been laid down to secure, as far as possible, that all objections to the table of rates shall be fully heard and decided before the table is finally approved, but when this approval has been given, the table will be binding upon the Courts, and no evidence to impugn its correctness will be admitted. The tenant who desires to contest a claim for enhancement will be at liberty to show that he does not hold the alleged area, or that his lands are not of the qualities specified in the plaint, or that he has a right to hold at specially favourable rates: but it will not be open to him to plead that the rates given in the table are not the rates equitably payable, or that the gross produce of his land is lower than the table shows it to be. The facts in dispute will thus be narrowed to certain particular points, upon which it would seem that the Courts ought to find no great difficulty in coming to a decision in accordance with the merits of the case. The advantage of the scheme is, that it finally determines those matters upon which experience shows that it is difficult to adduce strict legal proof in the trial of a particular claim; while the matters which it leaves undetermined are such as readily admit of being proved or disproved. It is the hardest thing in the world for a landlord to adduce evidence to the satisfaction of a Court of law, to shew the prevailing rate for rice lands in a given neighbourhood: but no landlord ought to have any difficulty in proving whether a particular ryot holds twenty beeghas of rice land or thirty. It has been provided that a table of rates, when once sanctioned, shall remain in force for ten years, and thereafter until a fresh table shall be similarly published; and that no ryot, whose rent may have been enhanced in accordance with the table, shall be liable to pay any further enhancement (except on the ground of alluvion) until after ten years since his rent was so enhanced.

The provisions for the preparation of price lists, and for the enhancement of the rents of tenures are reproduced without alteration from the Bill of the Commission.

Chapter XVI.—The reports of Judicial Officers, forwarded to this Government by the High Court, contain no remarks upon this chapter. It is noticed in only a few of the divisional and district reports. The Eastern Bengal Landholders' Association would extend the summary sale procedure to all tenures and occupancy holdings. But they propose that sales should be held by the Civil Court, and that a summary enquiry should be made previous to the sale. The Collector of Backergunge suggests that sale days should be held quarterly. He remarks that the friends of a defaulter often sign the mofussil notice with the express object of afterwards repudiating their signatures and obtaining a reversal of the sale. The Behar Indigo Planters' Association notice that the chapter does not extend to the recovery of arrears from ryots. The Manager of the Chukdighee estate in Burdwan would extend the procedure of the chapter to occupancy holdings. But the District Collector does not concur in this, though he would not object to its extension to tenures of a higher class. Baboo Upendra Chundra Dutt, a pleader of Midnapore, observes that special dates should be prescribed for districts in which the Umli year is current. The Commissioner of Orissa makes a similar remark. Baboo Joykissen Mookerjea considers that the defaulting tenure-holders should be made jointly responsible with the first purchaser for loss on a resale. He objects to the limitation in section 142 (*c*). On section 143(*c*) he observes that it is of little use to give the purchaser access to the proprietor's accounts, and that the defaulter ought to be made to furnish accounts of the last three years' collections. He thinks the purchaser should be entitled to collect from the date of the default, and not merely from the date of sale. On section 145(*b*) he remarks that the durputnidar ought to get compensation if his rent has been paid up to the time of the application for sale. But he seems not to have noticed that the clause allows the durputnidar to lodge his rent after the application, and at any time before the sale.

The law relating to the registration and sale of putni tenures is discussed in some detail in a paper which has been submitted to Government by the Maharaja of Burdwan The question is of course one of great interest and importance to the Maharaja: and the Government has given the fullest consideration to his suggestions.

The first point is whether the putni sale law shall be incorporated in the Rent Bill. The Maharajah would prefer the passing of a separate Act. But the Commission were of opinion that it was a more convenient arrangement to embody the law on this subject in the Rent Bill: and there appears to be good reason for adopting this course, the matter being essentially a part of the law of Landlord and Tenant.

The Maharajah proceeds to point out some particulars in which he considers the law for the registration of tenures to be defective. He thinks that the power of attachment is not sufficient to enforce registration: and he complains of the difficulty of apportioning the rent when a transfer takes place in the middle of a month or kist. The latter of these objections is sufficiently met by the Bill as it stands: with regard to the former, it would no doubt be possible to enact that a proprietor shall be at liberty to bring a suit to compel a tenure-holder to register and to give security. But considering that an unregistered transfer is of no validity, it does not appear that such a measure as this is required.

With regard to the sale procedure itself, the Maharajah remarks that it would be better if the proceedings were initiated in Cheyt and Assin instead of in Bysack and Kartick, and he proposes some modifications of the existing law regarding the presentation of the application and the issue of the sale notice. Before entering upon this part of the question, it is desirable to settle definitively to what classes of tenures and holdings this summary sale procedure shall apply. At present it applies only to putni tenures, and to tenures in which the right to sell for an arrear has been specially stipulated for.

The question is discussed in paragraph 163 of the Report. The majority of the Rent Commissioners were opposed to any extension of the law, in view

of the danger of entrusting a summary sale procedure to "petty landlords to be put in operation against tenants not always in a position to avail themselves of the aid of the law against oppression."

While the justice of this remark will be admitted, it may perhaps be doubted whether the principle need be carried so far as to exclude all extension of the present law. There might be a risk of injustice and hardship if the procedure were made generally applicable to tenures and under-tenures of all classes irrespective of the engagements of the parties. But the holders of permanent tenures, paying a rental of not less than fifty rupees, may fairly be presumed to be able to maintain their own rights: and such tenures have accordingly been brought under the provisions of the chapter. Whether the rule should be extended to occupancy holdings is a more difficult question. It is the desire of the Government to give landlords every reasonable facility for realising rents, and the application of the putni sale law is one of the most effectual means which can be employed, as is shown by the general punctuality with which putni rents are paid. But it is believed that landlords themselves will be ready to acknowledge that the time has not yet come when it would be just and fair to the ryot to make his holding in all cases liable to summary sale without decree. The utmost that the Government might perhaps do at present would be to say that it will not object to give this power of sale to those landlords who may be able to show that their accounts are properly kept, and that receipts are regularly given to their tenants. A section to this effect has accordingly been introduced tentatively into the draft Bill (II); it being understood that the Government is in no way pledged to maintain it, if after further consideration and discussion it should appear advisable that it should be withdrawn.

It has been suggested that the sales should be held quarterly instead of half-yearly. It may be doubted whether this would be an improvement. It is not desirable to multiply sales beyond the point at which the power to sell gives the landlord sufficient security for the realization of this rent, and it can hardly be said that half-yearly sales do not make adequate provision for this.

By the present law applications for sale are to be presented on the first of Bysak and the first of Kartick. The context makes it abundantly clear that the Legislature used these words as equivalent to the first day of the first and seven months of the year; and the wording should therefore be modified to suit the case of districts in which the Umli or Fusli year is current. This is already done under an order of the Board of Revenue, passed in 1840; but it is desirable that the practice should receive a distinct legal recognition, and a section to provide for these cases has accordingly been inserted in the Bill.

The Rent Commissioners justly remark that the invariable ground on which it is sought to set aside putni sales, is irregularity in the publication of the notices. At present the time allowed for this publication is rather short. The petition is presented on the 1st Bysack, notice of the sale is stuck up in the cutcherry, and an extract from this notice is sent into the mofussil for local publication. The law lays special stress on this local publication, which is meant, not so much for the information of the putnidar, as to enable durputnidars to pay in the arrear if they choose to do so. Service of the notice on the putnidar personally is not sufficient: it is essential that the notice should have been locally published before the 15th of the month.

The first of the month may be a Sunday or holiday, and in Kartick it is not unusual for the Collector's office to be closed for several days at the beginning of the month of the Doorga Poojah holidays. But the Collector will not sell unless he is certified that the notice was published before the 1 th. The zemindari amla are under a strong temptation to put in fictitious attestations of the service of the notice, and no doubt such attestations are not unfrequently presented to the Collector. It seems necessary either to provide that the notice shall be served by the Collector, or to arrange that the zemindar shall have a longer time for serving it. The former of these alternatives does not appear desirable. The zemindar is, and should be, the person solely responsible for the due observance of the legal forms. But it does not seem impossible to adopt the latter alternative.

Where there is no custom or agreement to the contrary, section 55 of the Bill makes a tenure-holder's rent payable in four instalments, one of which is the 1st Cheyt, and another is the 1st Assin. In cases falling under this rule, the zemindar might be allowed to present his application on the 2nd of Cheyt or Assin, or on any subsequent day during those months, instead of waiting till the 1st of Bysack or Kartick.

These cases, however, will be the exception and not the rule, for in existing tenures the payments are already regulated by custom or agreement. It would be possible to postpone the day of sale to the 15th of Jeyt or Agrahan, and to provide that the notice must have been published before the 1st of those months. But sales on the 1st Jeyt and 1st Agrahan have become such a recognized institution, that it would be better to retain these dates if practicable. The Maharajah of Burdwan appears to take it for granted that the mofussil notice must not issue till after the general notice has been stuck up in the cutcherry. But though, no doubt, this is what the law contemplates, there seems no sufficient reason why the zemindar should not issue his mofussil notice on the 1st Bysack, whether the notice has been put up in the Collector's cutcherry or not. It may be objected that the mofussil notice cannot possibly issue till the Collector has fixed the date of sale. But it would be quite sufficient for the notice to declare that the proprietor has applied (or is about to apply, as the case may be) to the Collector to sell the tenure on the 1st Jeyt (or 1st Agrahan) for an arrear of such-and-such an amount. It ought to be clearly understood that the Collector has nothing to do with the mofussil notice; that it is to be served by the zemindar's peon, who is responsible to his master for making a proper return; and that the law only requires that proof shall be forthcoming, when necessary, of the local notice having been duly published before the 15th of the month. This ought to give ample time for publication.

A rule of the Board of Revenue declares that if the 1st of Bysack or the 1st of Kartick is a holiday, the petition may be presented on the first open day following. The Maharajah remarks that this rule ought to be formally legalized. There seems no objection to this, and the revised Bill also adopts the Maharajah's further suggestion that the petition may be presented after the 1st of the month, with the Collector's leave, and on reasons being assigned for the delay.

Section 136 declares that the sale shall not be stayed unless the amount of the arrear is lodged. It has been thought reasonable to provide in the draft Bill (II), that interest and charges incurred must be paid as well as the balance claimed on account of rent. If the tenure is actually sold, these items are payable, under clause (2) of section 145, from the sale proceeds: and it seems an anomaly to permit the putnidar to pay up the principal only of the arrear and to oblige the proprietor to institute a separate suit for the recovery of interest and costs. The Maharajah of Burdwan urges that arrears of zemindari dawk tax ought to be allowed to be included in the petition for sale. But there seems no more reason for including such arrears, than for including sums due under the Survey Act or Embankment Act, or other similar laws. It appears necessary to maintain the principle that the stringent procedure of the summary sale law may only be employed for the recovery of current balances of rent.

The Maharajah evidently thinks that the law is much too tender to putnidars. He considers that a sale should not be set aside on the application of any person, but of the defaulter only; nor unless the putnidar can prove that he has actually sustained damage. But he seems to have overlooked the fact that the formalities of the law are intended for the security of others as well as of the putnidar. The Maharajah urges that, whether the notice has been duly published or not, there are always plenty of bidders at the Collector's cutcherry on the sale day. But a man may not like to be turned out of his tenure, even though he gets the full market price for it, and it is essential that any person interested should be allowed to sue for the reversal of a sale. The person endamaged is in many cases, perhaps in most cases, not the defaulter himself, but an under-tenureholder.

Upon section 137 the Maharajah remarks that there ought to be an express provision allowing the zemindar to appeal to the higher Revenue authorities if

the summary award of the Collector is against him: and that if the appeal is successful, the zemindar ought to be entitled to include the arrears in the next half-yearly sale. The present practice is stated to be that when the Collector's order is reversed in appeal, the tenure is sold on a day fixed by the Collector. The suggestion for including the arrear in the next sale has been adopted in the revised Bill. It seems unnecessary to make any express provision about appeal, as all orders of a Collector, which are not final by law, are appealable.

On section 139(*b*) the Maharajah observes that there ought to be some rule for determining priority as between the lien of an actual mortgagee and a salvor's lien. This remark appears to be just. The section says that the person making the advance shall be considered to have a lien in the same manner as if the loan had been on mortgage. But, in cases in which there is already a mortgage on the tenure, the wording of the section would seem to have the effect of putting the salvor in the position of a second mortgagee, whereas it appears reasonable to allow a priority to his claim. The section has therefore been amended by declaring that the salvor's advance shall be deemed to be a first mortgage on the tenure, and that any pre-existent first mortgage shall thereupon have the effect of a second mortgage.

By sections 141 and 146 a tenure must be sold by the Collector in whose district the lands are situated. If they are situated in more than one district, the Collector in whose district the greater portion of the lands is situated is to exercise jurisdiction. The Maharajah of Burdwan represents the great inconvenience of this rule. In accordance with his suggestion, it has been provided in the revised Bill that the application for sale shall ordinarily be made to the Collector on whose revenue-roll the estate is borne, but that the Board of Revenue may, for any sufficient reason, direct that the sale of any particular tenure shall be held hereafter at any other Collectorate.

With regard to section 141, Baboo Joykissen Mookerjea's argument for making the defaulter jointly responsible with the defaulting purchaser for any loss on resale seems to be invalid He urges that the defaulter gets a man of straw to bid, and to pay down the 15 per cent. earnest-money, but that the balance is not made good, and at the resale there are no bidders, and that the tenure is knocked down at a nominal price to the zemindar, who has then no means of recovering the original arrear. This appears a very imaginary grievance. A putni talook is never created without a bonus being paid: and the annual rent is consequently fixed below the market rate, as no one will give a bonus and pay the full rent as well. If the zemindar gets back this tenure at a nominal price, the benefit to him quite counterbalances the possibility of his not being able to recover the arrears of a single year.

The Baboo's objection to the exception in section 142 (*c*) cannot be admitted. The section declares that leases granted by a defaulter shall be cancelled by the sale of the tenure, except in cases in which the authority to grant such leases has been specially given. It would be manifestly unjust to strike out this exception.

In section 143 (*b*), the Maharajah's proposal to read "shall" instead of "may," has been accepted. The section, as it was previously worded, assumed that the purchaser would be anxious to secure the registration of the transfer, but it appears that the zemindars find that this is not the case. As to clause (*c*) of this section, Baboo Joykissen appears to be right in saying that the zemindar's papers are of no use to the purchaser, who wants to know the particulars of the holdings of the actual cultivators. The clause has accordingly been amended by declaring that the former tenure-holder must furnish the purchaser with a jummabundi, and that if he refuses to do so, a suit will lie against him for damages.

Section 145 gives rules for the disposal of the sale-proceeds. The Maharajah of Burdwan urges that the demand of the zemindar for arrear rents of former years ought to be a first charge on the balance of the purchase-money. This is virtually a proposal to make the summary sale procedure an indirect means of recovering back rents, and, as such, it appears open to strong objections.

Chapter XVII.—This chapter is entirely passed over in the reports received from Judicial Officers, and it is noticed in only one or two of the

other reports. The Behar Landholders' Association have made a few remarks upon it, but these refer to the effect of the chapter when read in connection with Chapter IV, and it has already been determined that this chapter shall be omitted. The Commissioner of Chota Nagpore would allow a landlord to sue in one plaint any number of ryots in one village for arrears of Rs. 10 or less. He remarks that this would save stamp-fees and costs. The zemindars of Chittagong object to the provision in section 150(*b*), which allows a notice to be served on an authorized naib or gomashta, instead of on the landlord. They remark that zemindary servants are low-paid and corrupt. They are apparently quite satisfied that it should be so, and they do not seem to see that it is their duty to employ respectable men and to pay them properly. They have also overlooked the point that the clause will only apply to those servants whom the landlord may specially empower by a written authority, and who may therefore be presumed to be trustworthy.

Section 147 declares that, except as otherwise provided in the Act, the provisions of the Code of Civil Procedure shall apply to all rent-suits, as regards both trial and execution. This principle having been accepted, it has been thought unnecessary to follow the Bill of the Rent Commission in enacting, in many of the succeeding sections of this and the following chapter, that certain specified sections of the Code shall apply to particular suits. These references to the Code have accordingly been omitted, and it is to be understood that the Code will generally be applicable to all rent-suits, with only such modifications or abbreviations of the ordinary procedure as may be specially provided for in the Bill.

Section 151 has been entirely recast, as this appears to be the proper place for inserting the provision already referred to under section 11, for the guidance of the Courts in determining whether a tenant shall be held to be a middleman or a ryot. It has also been thought that the entire section ought to be made applicable to tenure-holders as well as to ryots. It should be open to every tenant, not being a mere tenant-at-will, to bring a suit to have the conditions of his tenancy determined by the Court.

The only other alteration of any importance which has been made in this chapter is the introduction of provisions to regulate the measurement of lands. These are simply reproduced from the existing law on the subject, and their introduction appears to be necessary in consequence of the omission from Chapter XV of those sections of the Bill of the Rent Commission which relate to proceedings to obtain a settlement jummabundi. Section 153 of the Rent Commission's Bill has been omitted, as it is not intended to provide for the institution of such suits before the Collector in any case.

Chapter XVIII.—This chapter contains the abbreviated procedure which the Rent Commission propose for the trial of certain classes of cases. In paragraph 174 of their Report, the Commissioners give their reasons for thinking that no more summary procedure than this could safely be adopted.

It cannot be said that this portion of the Bill has met with general approval, though it must be admitted that the objections urged against it are of two opposite kinds: some critics considering that the summary character of the procedure has been carried too far, and others that it has not been carried far enough. The Judge of Jessore disapproves of the chapter, and remarks that there is no royal road to facts. The Judge of Patna thinks much of the chapter superfluous, and would extend the Code of Civil Procedure generally to rent-suits. The Judge of Tirhoot approves the chapter, and would raise the limit in non-appealable cases from Rs 10 to Rs 20. The Judge of Sarun also expresses general approval, but remarks that he does not see how the relation of landlord and tenant is to be proved. He would confine the summary procedure to cases in which the relation is admitted.

Several Judicial Officers object to a memorandum only of the evidence being taken in appealable cases. This objection is urged by the Subordinate Judges of Burdwan and Dinagepore, by the Subordinate Judge and the Moonsiffs of Gya, by the Subordinate Judges and Moonsiffs of Midnapore, by the Moonsiffs of Furreedpore, and the Moonsiffs of Shahzadpore, in Pubna.

The Moonsiff of Pubna disapproves of any attempt to introduce a summary procedure. The Second Moonsiff of Burdwan thinks the procedure cannot

be made more summary than in the Bill. On the other hand, the Moonsiff of Bhanga, in Furreedpore, thinks the summary procedure of the Bill hardly worth the name; and the Moonsiff of Bhagulpore believes it will do little or nothing to lighten the work of the Courts of First Instance.

With regard to the fixing of any non-appealable limit, the Moonsiffs of Moolfutgunge, in Furreedpore, object to the admission of the principle altogether. The Subordinate Judge of Dinagepore and the Moonsiff of Berhampore, in Moorshedabad, would raise the limit to Rs. 50, the Second Moonsiff of Contai would raise it to Rs. 25, and the Moonsiffs of Midnapore to Rs. 20; the Moonsiff of Bhagulpore would keep it at Rs. 10, and would have such cases tried under the Small Cause Court procedure.

Several officers remark that the arbitration sections of the Code should be extended to rent-suits.

The Commissioner of Orissa thinks the facilities given by the chapter are unimportant. He remarks that it is not clear how a purchaser is to know of the existence of encumbrances. He would extend the non-appealable limit to Rs. 500 in the case of a Judge, and Rs. 100 in the case of a Moonsiff. The Collector of Purneah considers that the chapter does not afford adequate relief. It would be simpler, in his opinion, to specify the sections of the Code which are not to apply. Baboo Joykissen Mookerjea complains that the references to the Code make the chapter very complicated. He objects to any restriction of the right of appeal, and to the provisions for selling tenures and holdings subject to encumbrances.

The Collector of Midnapore remarks that section 175 (for arrest before judgment) should be put in force only in extreme cases. Baboo Upurva Chunder Dutt, a pleader of the district, urges that a defendant-ryot should always be called upon to deposit the amount of the claim: but the Collector does not support this. The Collector of Burdwan would raise the non-appealable limit to Rs. 25, and would specify the time which must elapse between the service of the summons and the hearing, which he would fix at ten days. The Commissioner of Burdwan thinks the procedure complicated and troublesome. He would provide that if any zemindar satisfied the Collector that his accounts were accurately and regularly kept, he should be allowed to realize arrears under the Public Demands Act through the agency of the Collector. The Behar Landholders' Association urge that in section 211(4), provision should be made, as in the putni sale procedure, for making the claims of persons endamaged by the sale a first charge upon the balance of the sale proceeds. Rajah Promothonath Roy thinks the period of one year allowed for electing to avoid encumbrances too short, and would extend it to three years. The zemindars of Chittagong object to sales being made subject to encumbrances, and to the limitation to one year provided in section 210. They remark that a longer period gives the tenant a better chance of coming to an amicable settlement. They disapprove of the proposal to allow no appeal in cases under section 220. The Collector of Furreedpore would extend the Small Cause Court procedure to all rent cases. The Eastern Bengal Landholders' Association complain that the Bill gives no facilities for the speedy recovery of rent. They think the term of one year in section 210 insufficient in cases in which occupancy holdings are purchased. They object to the provision for taking down the substance only of the evidence, and to the sale of tenures and holdings subject to encumbrances. They would prefer that the sale should *ipso facto* cancel encumbrances on holdings. On section 211 (3) they remark that the six months' limitation will compel the landlord to sell up his tenant as soon as he has got his decree. They consider that all arrears of rent to the date of the confirmation of the sale should be payable from the sale proceeds.

The opposite character of the objections brought against the chapter will perhaps be thought to justify the conclusion that the Bill preserves a reasonable mean between the two dangers of defeating justice by technicalities and delays, and of legalizing injustice by too summary a method of procedure. Those who complain that its provisions do not afford sufficient facilities for speedy decision and execution may fairly be asked to specify the steps which might, in their opinion, be dispensed with. It may be pointed out to them that consistency would seem to require that they should withdraw their objections to section 192, which is the main provision for abbreviating the procedure

of the hearing. After full consideration, this section has been retained in the revised Bill. It is to be borne in mind that it will apply only to cases in which the relation of landlord and tenant is admitted or proved, and it may be added that it is the desire of the Government to establish separate Rent Courts, which will be presided over by selected officers of proved ability and experience Such officers, it is believed, may safely be entrusted with the discretion which this section allows the Judge to exercise.

The provisions of sections 203 to 207, regarding the sale of tenures and holdings in execution of decrees for arrears of their own rent, have been somewhat modified in the draft Bill (II). In paragraphs 185-188 of their Report, the Commissioners have explained their reasons for proposing that such sales shall in the first instance be held subject to encumbrances. The abstract fairness of the principle will probably be acknowledged, but the scheme has been objected to as likely to cause delays and complications, and in particular it has been urged that it is unsuited to occupancy holdings. In the Bill as now revised, it is provided that an occupancy holding shall in every case be sold free of encumbrances. As the proposal of the Commissioners in section 19 for allowing the tenant of an occupancy ryot to acquire the occupancy right, has been abandoned, there will be few, if any, cases in which an occupancy holding will be saddled with encumbrances which ought to be respected at a sale; though it is possible that some special provision will have to be introduced to meet the cases of the jotes of Rungpore and Backergunge, which, though virtually tenures, are technically occupancy holdings

The term of one year provided in section 210 has been retained, in accordance with the remarks already made in commenting upon section 79. It is observed that the Eastern Bengal Landholders' Association object to the proviso only in the case of occupancy holdings, and not of tenures, and under the Bill as now revised it will apply to tenures only.

The objection which has been made in some quarters to the limitation in section 220 of the right of appeal in certain cases, does not seem to be valid. In the North-Western Provinces the judgment of an Assistant Collector of the first class is final up to Rs. 100, and it surely cannot be said that a specially selected Subordinate Judge or Moonsiff is not as competent to exercise final jurisdiction as an Assistant Collector. The Government, at all events, does not hold any such low estimate of the ability of its Judicial Service, and it would not object to raising the limit to a higher sum than the Rent Commission have proposed. Several officers have recommended that this should be done, and in the revised Bill the limit has accordingly been fixed at Rs. 50.

The wording of the second schedule appended to the Bill has been revised in accordance with the changes already introduced into section 58. The changes made in the third schedule have been explained in the remarks offered upon Chapter XIV.

CALCUTTA,
The 18th May 1881.

H. J. REYNOLDS.

APPENDIX.

LIST OF PAPERS RECEIVED AND CONSIDERED.

Memorials, Reports, and Remarks by Associations, Landholders, Pleaders, and other non-officials.

1. Memorial by the Behar Landholders' Association, with notes on the proposed Rent Law.
2. Remarks by Baboo Lallchand Chowdhory and others, zemindars of Chittagong, appended to letter No. 57, dated 11th December 1880, from Commissioner of Chittagong.
3. Letter from Baboo Kishorilall Sirkar, Pleader of the High Court, dated the 21st January 1881
4. Note on the Report and draft Bill of the Rent Commission, by Rajah Promothonath Roy of Dighaputtia.
5. Memorial by landholders of the district of Monghyr, dated the 25th December 1880.
6. Note on the draft Rent Bill by Baboo Joykissen Mookerjea of Utterpara, dated 4th October 1880 (appended to letter No. 1381, dated 5th October 1880, from Collector of Hooghly.)
7. Letter from Baboo Surjinarain Singh, Pleader, Bhagulpore, dated the 9th September 1880, appended to letter No. 3570, dated the 27th November 1880, from Commissioner of Bhagulpore.)

8. Memorial by the landholders of Backergunge (without date) received on the 1st February 1881.

9. Letter from the Secretary to the Behar Indigo Planters' Association, dated the 21st November 1880.

10. Proposals for the amendment of Regulation VIII of 1819, by His Highness the Maharajah of Burdwan, dated the 9th May 1881.

11. Memorial by the landholders of Chittagong, dated the 20th November 1880.

12. Memorandum on the Bengal and Central Provinces Rent Bills, dated Lucknow, the 28th February 1881, by Luchmee Narain Pundit, Pleader of the High Court.

13. Memorandum on a Table of Rates, and the Procedure for Enhancement, by Baboo Joykissen Mookerjea (without date).

14. Petition from Hakimullah and others, ryots of the Attia (Tangail) sub-division of district Mymensingh, in favor of the Rent Bill.

15. Petition from Khudiram Mundul and others, ryots of district Nuddea, in favor of the Rent Bill, dated the 28th February 1881.

16. Note by the Eastern Bengal Landholders' Association on the draft Rent Bill (received 9th March 1881).

17. Petition of ryots of Howrah and the neighbourhood, in favor of the Old Settlement of Land Laws, dated 15th April 1881.

Reports by Judicial and Executive Officers of Government.

18. Report by the Commissioner of Bhagulpore (Mr. Barlow), dated the 27th November 1880.

19. Report by the Collector of Monghyr (Mr. D'Oyly), dated the 27th September 1880.

20. Report by the Collector of Purneah (Mr. Pratt), dated the 24th September 1880, with some additional notes by Mr. J. A. Hopkins.

21. Report by the Collector of Maldah (Mr. Porch), dated the 23rd September 1880.

22. Report by the Deputy Commissioner of the Sonthal Pergunnahs (Mr. Oldham), dated the 17th September 1880.

23. Report by the Collector of Bhagulpore (Mr. Newbery), dated the 10th September 1880.

24. Report by the Commissioner of Dacca (Mr. Pellew), dated the 27th December 1880, giving abstracts of the reports by the Collector of Dacca (Mr. Coxhead), the Collector of Furreedpore (Mr. Weekes), the Collector of Backergunge (Mr. Veasey), and the Collector of Mymensingh (Mr. Alexander).

25. Note by Baboo Parbuttichurn Roy, Deputy Collector of Dearah Surveys (appended to the above).

26. Letter from the Officiating Commissioner of Burdwan, dated the 22nd December 1880, forwarding the remarks recorded on the Rent Bill by the Commissioner (Mr. Ravenshaw.)

27. Report by the Collector of Beerbhoom (Mr. Wace), dated the 6th October 1880.

28. Ditto ditto of Burdwan (Mr. Stevens), dated the 5th October 1880.

29. Ditto ditto of Bankoora (Mr. Anderson), dated the 10th October 1880.

30. Ditto ditto of Midnapore (Mr. Price), dated the 30th October 1880.

31. Ditto ditto of Hooghly (Mr. Cornish), dated the 5th October 1880.

32. Remarks by the Judge of the 24-Pergunnahs (Mr. Browne)

33. Report by the Commissioner of Orissa (Mr. Smith), dated the 28th December 1880.

34. Ditto ditto of Chota Nagpore (Mr. Hewitt), dated the 9th November 1880.

35. Report by the Commissioner of the Presidency Division (Mr. Munro), dated the 31st December 1880.

36. Report by the Commissioner of Chittagong (Mr. Lowis), dated the 11th December 1880.

37. Ditto ditto of Rajshahye (Lord Ulick Browne), dated the 1st February 1881, with abstracts of the reports by the Collectors of Dinagepore (Mr. Glazier), Rungpore (Mr. Gun) Pubna (Mr. Posford,) and Rajshahye (Mr. Samuells.)

38. Letter from the Commissioner, Patna Division, dated the 10th March 1881, forwarding reports on the Rent Bill by the Collector of Patna (Mr. Metcalfe), the Collector of Gya (Mr. Kemble), the Collector of Shahabad (Mr. Nolan), the Collector of Mozufferpore (Mr. Worsley), the Collector of Durbhanga (Mr. Barrow), and the Collector of Saran (Mr. MacDonnell).

39. Letter from the Commissioner of Patna, dated the 1st February 1881, to the Secretary to the Government of Bengal, Revenue Department, forwarding correspondence regarding the Teur Canal in the Chumparun district.

40. Letter from the Registrar, High Court, dated the 26th February 1881, forwarding reports on the Rent Bill by District Judges, Subordinate Judges, and Moonsifs, with an abstract of the same.

41. Letter in continuation, dated the 3rd March 1881, forwarding a report by the District Judge of Cuttack (Mr. Cochran).

It is to be observed that several of the official reports embody the views of local committees, pleaders, landholders, and other non-officials consulted by the reporting officers.

Bill prepared by MR. H. J. REYNOLDS *(on Special duty).*

A Bill to Consolidate and Amend the Law of Landlord and Tenant within the Territories under the Administration of the Lieutenant-Governor of Bengal.

WHEREAS it is expedient to consolidate and amend the Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal: It is hereby enacted as follows:—

PRELIMINARY.

1. This Act may be called "The Bengal Landlord and Tenant Act, 188 :"

Short title.

It extends to all the territories for the time being under the administration of the Lieutenant-Governor of Bengal, except the Division of Orissa and the Scheduled Districts specified in the third part of the First Schedule of "The Schedule Districts Act, 1874." It shall be lawful for the said Lieutenant-Governor to extend the whole or any part of this Act to the Division of Orissa by a notification published in the *Calcutta Gazette*; and from the date of the publication of the said notification this Act or such part as may be specified in such notification shall have operation in the said Division.

Local extent.

It shall come into force on the day of 188

Commencement.

2. The enactments specified in the First Schedule hereto annexed are hereby repealed from and after the commencement of this Act. When this Act or any part of it is extended to the Division of Orissa, such of the said enactments as are in force in that Division, or, where a part only is extended, so much of them as is inconsistent with such part, shall cease to have operation in the said Division:

Repeal.

Provided that—

(1) any enactment or document referring to any Act or enactment hereby repealed shall be construed to refer to this Act or to the corresponding portion thereof:

(2) this repeal shall not affect

(*a*) the past operation of any enactment hereby repealed, nor anything duly done or suffered thereunder; nor

(*b*) any right, privilege, obligation, or liability acquired, accrued or incurrred under any enactment hereby repealed; nor

(*c*) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, or liability as aforesaid; and any such investigation, legal proceeding and remedy may be carried on as if this Act had not passed: and

(3) this repeal shall not revive any enactment, right, privilege, matter, or thing not in force or existing at the commencement of this Act.

3. In this Act the following words and expressions are used in the following senses, unless a different intention appears from the context:

Definitions of terms.

"Estate" means land included under one entry in any of the General Registers of Revenue-paying Lands and Revenue-free Lands, prepared and maintained under the Law for the time being in force by the Collector of a District:

Estate.

"Proprietor" means a person who as owner is solely or jointly in possession of an estate or a share of, or interest in, an estate:

Proprietor.

"Tenure" means (1) a rent-paying interest in land immediately subordinate to that of a proprietor and superior to that of a ryot; (2) a revenue-free or rent-free interest in land, when there exists no rent-paying interest in the same land between the proprietary interest and such revenue-free or rent-free interest:

Tenure.

Illustrations.

(*a*)—A *patni* interest is a tenure.

(*b*)—An *ijarah* or farm for a term of years is a tenure.

(*c*)—A. holds 120 bighas of valid revenue-free land situate within the limits of B.'s revenue-paying estate and not included under any entry in the General Register of Revenue-free Lands maintained by the Collector of the District under the Law for the time being in force. This land is in the actual possession of ryots who pay their rents to A. The interest of A. in such land is a tenure.

(*d*)—B., the proprietor of a revenue-paying estate, makes a rent-free grant to A. of 50 bighas of land included in such estate and in the actual possession of ryots. A., by virtue of such grant, becomes entitled to the rents payable by these ryots. A.'s interest in these 50 bighas is a tenure.

"Tenure-holder" means a person who as owner is solely or jointly in possession of a tenure or a share of, or interest in, a tenure:

Tenure-holder.

"Undertenure" means (1) a rent-paying interest in land subordinate to that of a tenure-holder and superior to that of a ryot; (2) a rent-free interest in land, when there exists a rent-paying interest in the same land between the proprietary interest and such rent-free interest:

Undertenure.

Where there are more undertenures than one in the same land, the undertenure immediately subordinate to that of the tenure-holder is termed an "undertenure of the first degree;"

Undertenure of the first degree.

the undertenure immediately subordinate to the undertenure last mentioned is termed an "undertenure of the second degree;" the

Undertenure of the second degree.

undertenure immediately subordinate to that last mentioned is termed an "undertenure of the third degree;" and so on in order:

Undertenure of the third degree.

Illustrations.

(*a*)—A *dar-patni* interest is an undertenure of the first degree.

(*b*)—A *se patni* interest is an undertenure of the second degree.

(*c*)—A *dar-ijarah* is an undertenure.

(*d*)—B holds a *patni* tenure of 2,000 bighas of land under C, the proprietor of the Gopalpur estate. B makes a rent-free grant to A of 80 out of the 2,000 bighas. These 80 bighas are in the actual possession of ryots, who after the grant, pay their rents to A. The interest of A is an undertenure.

"Undertenure-holder" means a person who as owner is solely or jointly in possession of an undertenure, or a share of, or interest in, an undertenure:

Undertenure-holder.

"Ryot" means a person who holds lands or who occupies and cultivates land, if such person or his predecessor in title was originally let into possession of such land for the purpose of cultivating it or bringing it under cultivation. A person cultivates land or brings land under cultivation within the meaning of this definition, when the cultivation is carried on by himself, or by the members of his family, or by servants, or by hired labourers, or by persons to whom he has sub-let the land or any part of it, or partly by some and partly by others of these persons:

Ryot.

"Holding" means the interest of a ryot in the land which he holds or occupies and cultivates, and which forms the subject of a separate tenancy:

Holding.

"Occupancy holding" means a holding in which a ryot or any such tenant as is mentioned in section 32 has a right of occupancy:

Occupancy holding.

"Under-ryot" means a person to whom a ryot has sub-let his holding or a portion thereof:

Under-ryot.

"Rent" means whatever is payable or deliverable by a tenure-holder, undertenure-holder, or occupancy ryot to the proprietor, tenure-holder, or undertenure-holder possessing the interest immediately superior in the land held by him, in recognition and satisfaction of such superior interest; or whatever is payable or deliverable as a return or compensation for the use or occupation of land, or for any rights of pasturage, forest rights, fisheries, or the like:

Rent.

"Land" includes woods and water thereupon: when applied to land cultivated or held by a ryot, it means land used, or intended to be used, for agricultural or horticultural purposes, or the like. In Chapter XVIII it means (*a*) tenures, undertenures and holdings; (*b*) land used, or let to be used, for agriculture, horticulture, pasture, or other similar purpose; or for dwelling-houses, manufactures, or other similar buildings; and (*c*) rights of pasturage, forest rights, fisheries, and the like:

Land.

Explanation.—*Bastu* or homestead land is land used for agricultural purposes when it is occupied by a ryot, and, together with the land cultivated by such ryot, forms a single holding:

"Tenant" means a person liable to pay or deliver rent:

Tenant.

"Landlord" means a person to whom a tenant is liable to pay or deliver rent:

Landlord.

"Lease" or "Pottah" means a written instrument creating or continuing the relation of landlord and tenant, and executed by the landlord in favour of the tenant:

Lease. Pottah.

"Kabuliyat" means a written instrument creating or continuing the relation of landlord and tenant, and executed by the tenant in favour of the landlord, and includes the counterpart of a lease or pottah:

Kabuliyat.

In Chapter XI, "Behar" means all the districts of the Patna Division, and those districts, or parts of districts, of the Bhagulpore Division, to which the Lieutenant-Governor of Bengal, by a notification published in the *Calcutta Gazette*, shall extend the provisions, or any part of the provisions, of the said Chapter.

Behar.

"Collectorate" means the district to which a Collector is appointed, and does not include lands situate beyond the local limits of such district, but forming part of an estate of which the revenue is paid into the treasury of the said district:

Collectorate.

"Signed" includes "marked" when the person making the mark is unable to write his name; it also includes "stamped" with the name of the person referred to:

Signed.

"Judge" means the presiding officer of a court:

Judge.

"Section" means a Section of this Act.

Section.

4. Nothing in this Act is intended to affect—

Saving of custom, &c.

(*a*) any custom or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions;

(*b*) the powers and duties of settlement officers as by law defined and limited;

(*c*) the provisions of any special or local law not hereby repealed either expressly or by necessary implication.

Illustration.

The custom of a ryot sub letting his land for a term, or from year to year, is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. It is not intended that such custom should be affected by this Act.

Division of Act into Chapters.

5. This Act is divided into Chapters, as follows:—

Chapter I.—Of Tenure-holders and Undertenure-holders.

Chapter II.—Of Ryots entitled to hold land at Fixed Rates.

Chapter III.—Of Ryots who possess a Right of Occupancy.

Chapter IV.—Of Ryots who do not possess a Right of Occupancy.

Chapter V.—Of the use of Land for Building Purposes.

Chapter VI.—Of Merger.
Chapter VII.—Of the Registration of Transfers of Tenures, Undertenures, and Occupancy-holdings.
Chapter VIII.—Of Rent, Instalments of Rent, Receipts for Rent, Deposit of Rent, Apportionment of Rent, and Hypothecation for rent.
Chapter IX.—Of Coparceners.
Chapter X.—Of some Miscellaneous Rights of Landlords and Tenants.
Chapter XI.—Of Special Provisions for Behar.
Chapter XII.—Of Damages and Penalties.
Chapter XIII.—Of Limitation.
Chapter XIV.—Of Distraint.
Chapter XV.—Of Proceedings to enhance the Rent payable in money by Ryots having a right of Occupancy, and by Tenure-holders and Undertenure-holders.
Chapter XVI.—Of the Recovery of Arrears of Rent in certain cases by Summary Sale without Decree.
Chapter XVII.—Of certain Special Rules of Procedure applicable to suits between Landlords and their Tenants or Agents.
Chapter XVIII.—Of the Procedure in Suits for the Recovery of Arrears of Rent, and certain other Suits.

Chapter I.—Of Tenure-holders and under-tenure-holders.

Tenure or undertenure held at fixed rent since Permanent Settlement not liable to enhancement.

6. (*a*) No tenure-holder or undertenure-holder, who otherwise than under a terminable lease holds his tenure or undertenure at a fixed rent which has not been changed from the time of the Permanent Settlement of Bengal, Behar, and Orissa, made in the year of the Christian era one thousand seven hundred and ninety-three, shall be liable to any enhancement of such rent.

Presumption from holding since 1839 at unchanged rent.

(*b*) Whenever it shall be proved in any suit under this Act that the rate of rent, at which any such tenure or undertenure is held, has not been changed from the year 1839 of the Christian era to the date of the commencement of such suit, it shall be presumed that such tenure or undertenure has been held at that rent from the time of such Permanent Settlement, unless the contrary be shown, or unless it be proved that such tenure or undertenure was created, or such rent fixed, at some later period.

Explanation.—Such presumption may be made even though the tenure-holder or undertenure-holder do not plead in express terms that the tenure or undertenure has been held from the time of the Permanent Settlement at a rent which has not changed since that time, provided that there be nothing in his statements inconsistent with its having been so held.

Exception—(1)—In the case of a tenure or undertenure situate in an estate not permanently settled, such presumption shall not operate to prevent the enhancement of the rent of such tenure or undertenure upon the expiry of a temporary settlement of the revenue, unless the right to hold such tenure or undertenure for ever at a fixed rate of rent has been expressly recognized in Settlement Proceedings by a Revenue authority empowered by Government to make definitively or confirm settlements.

(2)—In the case of a tenure or undertenure situate in an estate sold by public auction for arrears of revenue, or under a decree of the Civil Court, such presumption shall not operate to prevent the enhancement of the rent of such tenure or undertenure at the suit of the auction-purchaser of the estate, unless the right to hold such tenure or undertenure for ever at a fixed rate of rent has already been declared in a suit in Court, or it be shown that such tenure or undertenure has actually been held at a fixed rate of rent from the time of such Permanent Settlement as aforesaid.

Tenure or undertenure held since Permanent Settlement liable to enhancement only in certain cases.

7. No tenure or undertenure which has been held since the time of such Permanent Settlement is liable to enhancement except upon proof (1) that the landlord under whom it is held is entitled to enhance the rent thereof either (*a*) by the special custom of the district, or (*b*) by the conditions under which the tenure or undertenure is held; or (2) that the tenure-holder or under-tenure-holder by receiving abatements from his rent has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it.

Explanation I.—In order to entitle a tenure-holder or undertenure-holder to the benefit of this Section, it is sufficient for him to show that his tenure or undertenure existed and could have been registered in the Collector's office at the time of the Permanent Settlement, even though it were not actually registered.

Explanation II.—An abatement of rent granted to a tenure-holder or undertenure-holder for land taken under the provisions of "The Land Acquisition Act, 1870," is not an abatement within the meaning of this Section.

Tenure-holder or under-tenure-holder liable to enhancement for land gained by alluvion and entitled to abatement for land lost by diluvion.

8. Notwithstanding anything contained in Section 6 or in Section 7, every tenure-holder and under-tenure-holder shall, in the absence of an express contract to the contrary, be liable to pay additional rent for land added to his tenure or undertenure by alluvion, and shall be entitled to abatement of rent in respect of any diminution of the area of his tenure or undertenure caused by diluvion or otherwise. Such increase of rent shall be calculated at the customary rate payable by persons holding similar tenures or undertenures in the vicinity, or, where no such customary rate exists, at such rate as to the Court shall appear fair and equitable. Such abatement of rent shall bear the same proportion to the rent previously paid as the diminution of the total assets bears to the previous total assets of the tenure or undertenure.

Limits of enhancement of rent of tenures and undertenures.

9. In any case in which the rate of rent of a tenure-holder or under-tenure-holder is liable to enhancement, such rate may be enhanced up to the limit of the customary rate payable by persons holding similar tenures or under-tenures in the vicinity; or, where no such customary rate exists, up to such limit as to the Court shall appear fair and equitable; provided that in cases where no customary rate exists, and in the absence of any specific contract to the contrary, the profit of such tenure-holder or under tenure-holder shall not exceed twenty per centum of the balance which remains after deducting from the gross rents payable to him the expenses of collecting such rents. If such tenure-holder himself occupies any portion of the land included in his tenure or undertenure, or has made a rent-free grant of any portion of such land, a reasonable rent shall be calculated for such portions and included in the gross rents aforesaid.

Limit of enhancement of rent of tenure-holder or undertenure holder if more than half the land was unreclaimed at the time of the creation of the tenure or under-tenure.

10. If more than half the land included in any tenure or undertenure was unreclaimed at the time when the tenure or under-tenure was created, and if the reclamation of such unreclaimed land were one of the objects of the creation of the tenure or undertenure, and such unreclaimed land were reclaimed accordingly, the rent of such tenure-holder or undertenure-holder, notwithstanding anything contained in section 9, shall not be enhanced, so as to reduce his profit below twenty per centum of the balance mentioned in, and calculated according to the provisions of, section 9: and the Court may, in any case in which such rent is enhanced, allow to any such tenure-holder or undertenure-holder by way of profit any such share of the said balance exceeding twenty per centum thereof, as to such Court may appear fair and equitable.

Enhanced rent not to be more than double the previous rent.

11. (*a*) In any case in which the rent of a tenure-holder or under-tenure-holder is found to be liable to enhancement, the enhanced rent shall not be more than double the rent previously payable, unless the enhancement is under section 8.

Enhancement may be gradual.

(*b*) The Court may, on the ground of hardship, direct that the enhancement shall be gradual—that is to say, that the rent shall increase yearly by degrees for any number of years not exceeding five, until the limit of the enhancement allowed has been reached.

Rent once enhanced may not be altered for ten years.

(*c*) When the rent of a tenure-holder or undertenure-holder has been enhanced by a Civil Court under the provisions of this Act, such rent shall not be liable to alteration for a period of ten years next ensuing after the date on which such enhancement took effect.

Explanation.—An increase of rent on account of land gained by alluvion, or a decrease of rent on account of land lost by diluvion, is not an alteration within the meaning of Clause (*c*) of this section.

Permanent tenures and undertenures declared heritable, devisable, and transferable.

12. All permanent tenures and undertenures are declared to be heritable, devisable, capable of being transferred by sale, gift or otherwise at the discretion of the holder, answerable for his personal debts, and subject to the process of the Civil Courts, as other immovable property.

Legal incidents of a *patni* talook.

13. (*a*) A *patni* talook is a tenure held at a rent fixed in perpetuity, heritable, devisable, capable of being transferred by sale, gift or otherwise at the descretion of the holder, answerable for his personal debts, and subject to the process of the Civil Courts in the same manner as other immovable property.

(*b*) A patni tenure is not liable to be cancelled for default in payment of the rent thereof, but such tenure may be brought to sale by public auction, and the defaulting patnidar or holder of such patni tenure is entitled, subject to the provisions of this Act, to any surplus proceeds of sale beyond the arrears of rent due upon such tenure.

Right to sub let.

(*c*) A patnidar is entitled to let out the lands composing his tenure in any manner most conducive to his interest, and any engagements entered into by such patnidar with others are legal and binding between the parties to the same, their heirs and assignees: provided, however, that no such engagement shall operate so as to prejudice the right of the proprietor to hold the patni tenure answerable for any arrear of his rent in the state in which he granted it, and free of all incumbrances resulting from the act of his tenant, the patnidar.

Explanation.—In any case in which the interest in land created by a lease is therein denominated a patni taluq or patni tenure, it shall be presumed that a tenure having the incidents specified in this section is intended.

Provisions of section 13 applicable, *mutatis mutandis*, to *patni* under-tenures.

14. The provisions of section 13 shall apply, *mutatis mutandis*, to the following undertenures, namely, a *patni taluk* of the second degree, which is termed a "darpatni," a *patni taluk* of the third degree, which is termed a "sepatni;" and a *patni taluk* of the fourth degree, which is termed a "chahar-patni."

Chapter II.—Of Ryots entitled to hold Land at Fixed Rates.

Ryots holding land at rates not changed since Permanent Settlement to continue to hold at those rates.

15. Ryots who hold lands at fixed rates of rent which have not been changed from the time of the Permanent Settlement of Bengal, Behar, and Orissa, made in the year of the Christian era one thousand seven hundred and ninety-three, are entitled to continue to hold their lands at those rates.

Explanation I.—In the case of rent payable in kind, a fixed proportion of the produce is a fixed rate within the meaning of this section.

Explanation II.—The operation of this section is not affected by the fact of the land having been demised to different persons, or transferred, or separated from other land which formed with it a single holding, or amalgamated with other land into one holding, if the rate of rent has not been altered thereby..

16. Whenever it shall be proved in any suit or proceeding under this Act that the rent at which land is held by a ryot has not been changed from the year 1839 of the Christian era to the date of the commencement of such suit, it shall be presumed that the land has been held at that rent from the time of such Permanent Settlement, unless the contrary be shown, or unless it be proved that such rent was fixed at some later period.

Presumption from holding since 1839 at unchanged rent.

Explanation.—Such presumption may be made even though the ryot do not plead in express terms that the land has been held from the time of the Permanent Settlement at a rent which has not been changed since that time, provided that there be nothing in his statements inconsistent with its having been so held.

Exception 1.—In the case of a ryot holding land in an estate not permanently settled, such presumption shall not operate to prevent the enhancement of the rent of such land upon the expiry of a temporary settlement of the revenue, unless the right to hold such land for ever at a fixed rate of rent has been expressly recognized in Settlement Proceedings by a Revenue authority empowered by Government to make definitively or to confirm settlements.

Exception 2.—In the case of a ryot holding land in an estate, tenure, or undertenure sold by public auction for arrears of revenue or rent, or under a decree of the Civil Court, such presumption shall not operate to prevent the enhancement of the rent of such land at the suit of the auction-purchaser, unless the right to hold such land for ever at a fixed rate of rent has already been declared in a suit in Court, or it be shown that such land has actually been held at a fixed rate of rent from the time of the Permanent Settlement.

17. The following legal incidents shall attach to every holding held at a fixed rate of rent within the meaning of this Chapter:

Legal incidents of a holding at fixed rates.

(*a*) It shall be saleable under the provisions of this Act for arrears of the rent thereof, and shall be answerable for the personal debts of the holder, and subject to the process of the Civil Courts, as other immovable property.

(*b*) It shall be heritable according to the law of inheritance to which the holder is subject, and shall be devisable by will, and transferable by private sale, gift, or otherwise at the pleasure of the holder. Provided that no division of the holding or of the rent shall be made so as to be binding on the landlord without his written consent.

(*c*) A ryot may not be ejected from a holding held at a fixed rate of rent.

18. A ryot entitled to hold land at fixed rates shall be liable to pay additional rent for land added to his holding by alluvion, and shall be entitled to abatement of rent in respect of any diminution of the area of his holding caused by diluvion or otherwise. Such increase shall be calculated at the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages in the vicinity. Such abatement shall bear the same proportion to the rent previously paid as the diminution of the total annual value bears to the previous total annual value of the holding.

Ryot holding at fixed rates liable to pay additional rent for land gained by alluvion, and entitled to abatement for land diluviated.

Chapter III.—Of Ryots who possess a Right of Occupancy.

19. Every settled ryot has a right of occupancy in the land which he holds or cultivates as a tenant, whether such land be held under a lease or otherwise.

Right of occupancy how acquired.

Explanation 1.—A settled ryot is a ryot who has his fixed habitation in the village or estate in which he holds or cultivates land as a tenant: or whose fixed habitation is within a distance of two miles from the lands which he holds or cultivates as a tenant.

Explanation 2.—A right of occupancy may be acquired—

(*a*) by a person holding or occupying land immediately under, and paying rent directly to, a mukarraridar or istemrardar;

(*b*) by a person holding or occupying khamar, nijjote, or sír land immediately under, and paying rent directly to, a proprietor, if such land is held or occupied otherwise than for a term, or year by year.

Explanation 3.—A right of occupancy may not be acquired—

(*a*) by a proprietor in land which is a portion of his estate;

(*b*) by any such tenure-holder or under-tenure-holder as is mentioned in Chapter I, in land which is a portion of his tenure or undertenure;

(*c*) by a mukarraridar or istemrardar in land in which he has a mukarrari or istemrari interest;

(*d*) by an ijarahdar or farmer of rents, in land which is a portion of his ijarah;

(*e*) by a person holding or occupying land immediately under, and paying rent directly to, a ryot having a right of occupancy therein;

(*f*) by a person holding or occupying khamar, nijjote, or sír land immediately under, and paying rent directly to, a proprietor, if such land is held for a term, or year by year.

20. No contract, whether entered into before or after the commencement of this Act, shall in any case debar a tenant from acquiring a right of occupancy, except under the provisions of Section 32.

Acquisition of right of occupancy cannot be barred by contract. Exception.

21. The following legal incidents shall appertain to every holding in which a right of occupancy has been acquired under this Act, or any Act repealed thereby; that is to say—

Legal incidents of a right of occupancy.

(*a*) It shall be saleable in execution of any decree passed for arrears of the rent thereof, but shall not be saleable in execution of any other decree.

Saleable in execution of a decree for arrears of rent only.

(*b*) It may be transferred by private sale or gift, and may be devised by will, and the consent of the landlord shall not be necessary to the validity of any such transfer or devise: provided that no transfer or devise of a portion only of such holding shall be valid as against the landlord without his written consent. A transfer under

Transferable by sale or gift and devisable.

this clause is not complete until possession has been obtained by the transferree.

Heritable according to the law of inheritance of the tenant.

(*c*) It shall be heritable according to the law of inheritance to which the tenant is subject, but no division of the holding or of the rent shall be made so as to be binding on the landlord without his written consent. If a ryot who has a right of occupancy in land dies, leaving no heirs and without having made a will, the landlord shall be entitled to take possession of such land.

Ryot entitled to hold at fair and equitable rate.

(*d*) A ryot having a right of occupancy, but not holding at a fixed rate of rent, is entitled to hold at a fair and equitable rate. In case of dispute, the rate previously paid by the ryot shall be deemed to be fair and equitable, unless the contrary be shown in a suit by either party under the provisions of this Act.

Ryot may not be ejected from land in which he has such right.

(*e*) No ryot may be ejected from land in which he has a right of occupancy, whether for non-payment of rent or other cause not being a breach of a stipulation in respect of which such ryot and his landlord have contracted in writing that the ryot shall be liable to ejectment for a breach thereof. No ryot shall, however, be ejected for a breach of any such stipulation until the landlord has proved to the satisfaction of the Court that the injury sustained by the breach is such as to justify the ejectment of the tenant, and cannot justly be made the ground of compensation to be paid to the landlord.

Rent of occupancy ryot payable in kind not to exceed fifty per cent. of the gross produce in the case of staple crops. In the case of other crops, a special contract in writing may be made and enforced; if no such contract, value of twenty-five per cent. of staple crops may be recovered.

22. When the rent payable by a ryot for an occupancy holding is paid in kind, or by paying the equivalent value of a certain proportion of the actual gross produce, and such ryot does not receive from his landlord seed or labour or other assistance in producing the crop, such rent shall not, in the absence of any specific contract to the contrary, exceed fifty per centum of the gross produce in the case of any such staple crop as is mentioned in Clause (*c*) of Section 24. In the case of crops other than such staple crops, if the landlord and tenant have contracted in writing that a certain share of the gross produce shall be paid to the landlord as rent, such contract may be enforced; but, in the absence of any such contract, the landlord shall not be entitled to recover any other or greater rent than twenty-five per centum of the average annual value of the gross produce calculated, as provided in Clause (*c*) of Section 24.

Rent of ryot having a right of occupancy may be enhanced on what grounds.

23. Subject to the other provisions of this Act, a landlord is entitled to enhance the rent payable to him in money by a ryot for land in which such ryot has a right of occupancy. Such rent may be enhanced upon any one or more of the following grounds, and not otherwise:—

(1) on the ground that the rate of rent paid by such ryot is below the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages in the vicinity;

(2) on the ground that the quantity of land held by such ryot has been shown by measurement to be greater than the quantity for which rent has been previously paid by him.

(3) on the ground that the productive powers of the land held by such ryot as compared with such powers at the time when the rent was fixed, or at any subsequent time, have increased otherwise than by the agency or at the expense of the ryot, and from causes not merely temporary or casual;

(4) on the ground that the prices of produce in the locality, or at the usual markets, as compared with similar prices at the time when the rent was fixed or at any subsequent time, have increased otherwise than by the agency or at the expense of the ryot, and from causes not merely temporary or casual.

Illustrations—

Of Ground (1).

(*a*).—A's paternal grandfather seventy years ago reclaimed and rendered culturable the land which A now holds and cultivates, and which came to him by inheritance from such paternal grandfather. B is a settled ryot who holds and cultivates land which was in a culturable state when B was first let into possession thereof. A and B have each, therefore, a right of occupancy. There is evidence that the hereditary descendant of a ryot, who being the first settler reclaimed the land, has a special privilege. A and B are not ryots of the same class.

(*b*).—A is in possession of a holding which has descended to him from his great-grandfather, who held it at the time of the Permanent Settlement. B was let into possession of his holding twenty years ago. There is evidence that the descendants of ryots, who were in possession at the time of the Permanent Settlement, customarily hold at rates less by four annas in the rupee than ryots who have come into possession at a later period. A and B are not ryots of the same class.

Of Ground (2).

(*a*).—A, a ryot, holds his land at one rupee per bigha and has been paying an annual rent of Rs. 17 as for 17 bighas. A measurement shows that he holds 23 bighas, and the whole of this land is of the same quality. His rent can be enhanced to Rs. 23.

(*b*).—A, a ryot, has a holding usually described in the jama-wasil-baki papers and the ryot's receipts as comprising 27 bighas, and the rent paid for which is Rs. 33-12. No measurement of this holding has at any time been made, and there is no allegation that its area has been diminished by diluvion; but 15 bighas of land clearly distinguishable are shown by measurement to have been added to the holding by alluvion. This accreted land is of a better quality than any portion of the original holding, and it is shown that two rupees per bigha is the prevailing rate paid by ryots of the same class with A for land of a similar description and with similar advantages in the vicinity. A is liable to pay Rs. 30 in addition to his former rent of Rs. 33-12.

(*c*).—A was let into possession of a holding in 1860 under a written lease, which describes the holding as comprising 37 bighas of land, and gives the boundaries. The land is situated in a cultivated village, and the boundaries are ascertainable and definite. In 1880 the land within these boundaries is measured, and found to be 45 bighas. A is not liable to pay enhanced rent in respect of the 8 additional bighas found to be within the boundaries stated in his lease.

(*d*).—A was let into possession of a holding in 1850 under a written lease, which describes the holding as comprising 50 bighas, more or less, and gives the boundaries. The land is situate in a village, which, in 1850 consisted chiefly of uncleared jangal, and the boundaries are inexact and indefinite. In 1880, A is found to be in possession of 200 bighas of cultivated land, to which the description by boundaries is applicable. A is liable to enhancement.

(*e*).—A held and cultivated 30 bighas of land at one rupee per bigha from 1863 to 1875. The land so regu-

larly cultivated by him up to 1875 was then bounded on the east by uncleared waste land belonging to A.'s landlord. In 1876 A began to encroach upon this waste land, and in 1880 is found to be, without the acquiescence of his landlord, in possession of 20 bighas of this waste land in addition to the 30 bighas originally held and cultivated by him. A's landlord may either treat A as a trespasser in respect of these 20 bighas, and sue to eject him therefrom, and to recover from him mesne profits in respect thereof; or may accept A as his tenant for the 20 bighas as an addition to A's original holding of 30 bighas. In the latter case A shall be liable to pay additional or enhanced rent for the 20 bighas of land.

Meaning of term "landlord."

Explanation I.—No person is a "landlord" within the meaning of this section who has not—

(*a*) a permanent transferable interest, or an interest not less than a life interest, in the land of which the rent is payable to him: or

(*b*) a farming or leasehold interest in the land of which the rent is payable to him.

Meaning of term "land."

Explanation II.—The term "land" in this Section means land used or intended to be used for agriculture, horticulture, pasture, or other similar purpose. When a landlord proceeds upon the fourth ground to enhance the rent of land used or intended to be used for pasture, such rent may be so fixed that the enhanced rate shall bear to the rate then prevailing for arable land in the vicinity the same proportion which the former rate bore to the similar rate prevailing at the time when such former rent was fixed, or at any subsequent time.

Landlord entitled to whole increment when effected solely by his agency or at his expense, otherwise to half only.

24. (*a*). In any case in which the rent of an occupancy holding is enhanced upon the third or fourth ground, specified in section 23, if the increase of the productive powers of the land or of the price of produce has been wholly effected by the agency or at the expense of the landlord, such landlord shall be entitled to the whole of the benefit of such increase. If such increase has taken place otherwise than by the agency or at the expense of the landlord or the ryot, such landlord shall be entitled to one-half of such benefit only.

Limit to enhancement upon the third or fourth ground.

(*b*). In any case in which the rent of an occupancy holding is enhanced upon the third or fourth ground specified in Section 23, the enhanced rent shall not be more than double the rent previously paid; and shall not bear a higher proportion to such rent previously paid than the increased productive powers or increased prices bear respectively to the former productive powers or the former prices.

Calculation to be based upon a reasonable average of years.

In estimating the increased productive powers or the increased prices, the Court or the Collector shall have regard to such an average of years as under the circumstances may appear reasonable.

Rent enhanced on first, third, or fourth ground not to exceed one-fourth of the average annual value of gross produce, calculated for staple crops.

(*c*). In any case in which the rent of a ryot having a right of occupancy is enhanced upon the first, third, or fourth ground specified in section 23, the enhanced rent shall not be more than one-fourth of the average annual value of the gross produce of the land for which such rent is payable. Such average annual value shall be calculated for staple crops only, and upon the prices at harvest time of a reasonable number of years. The Board of Revenue may from time to time make, and, when made, alter, add to, and revoke rules for calculating such average annual value, and shall also determine, and notify by an advertisement in the *Calcutta Gazette*, what crops shall be deemed to be staple crops, for the purposes of such calculation, in any district or in any area less than a district to be described in such notification. When such staple crops have been so determined and notified for any such district or area, one year's previous notice shall be given of any alterations in such staples.

Board of Revenue to make rules for calculating average value and to determine and notify staples.

Progressive enhancement may be directed.

(*d*). In any case in which the rent of an occupancy holding is enhanced, if it be shown that the payment of the enhanced rent would be attended with hardship, the Court may direct that such enhancement shall be gradual,—that is to say, that the rent shall increase yearly by degrees for any number of years not exceeding five until the limit of the enhancement allowed has been reached.

No enhancement in certain cases of the rent of a ryot having a right of occupancy.

(*e*). The rent of a ryot having a right of occupancy shall not be liable to enhancement (1) when he holds under a written lease for a term certain, which has not expired; (2) when such ryot and his landlord have contracted that such rent shall not be enhanced.

Ryot having right of occupancy when entitled to abatement of rent.

25. A ryot having a right of occupancy is entitled, on any one or more of the following grounds and not otherwise, to an abatement of the rent payable by him in money, namely:—

(1) on the ground that the quantity of land held by such ryot has been shown by measurement to be less than the quantity for which rent has been previously paid by him;

(2) on the ground that the productive powers of the land held by such ryot, as compared with such powers at the time when the rent was fixed, or at any subsequent time, have decreased from some cause beyond the ryot's control, and not merely temporary or casual;

(3) on the ground that the prices of produce in the locality or at the usual markets, as compared with similar prices at the time when the rent was fixed, or at any subsequent time, have decreased from some cause beyond the ryot's control, and not merely temporary or casual.

Provisions for enhancement applicable to abatement.

The provisions of section 23 regarding the enhancement of the rent payable by a ryot having a right of occupancy, shall, so far as they are relevant, be applicable, *mutatis mutandis*, to claims to abatement of rent under this section.

Chapter IV.—Of Ryots who do not possess a Right of Occupancy.

Ryot who does not possess a right of occupancy may be evicted at the will of his landlord, but only through the Court.

26. (1) Subject to the other provisions of this Act, a ryot who does not possess a right of occupancy shall not be entitled to retain possession of land against the will of his

landlord: but a ryot who does not quit of his own accord, shall not be evicted otherwise than by the action of the Civil Court.

Such ryot may not sue for determination of future rent or for abatement.

(2) No ryot, who does not possess a right of occupancy, may maintain a suit against his landlord—

(*a*) for the determination of the rent at which he shall be entitled to continue to hold or occupy and cultivate land; or

(*b*) for abatement of the rent previously paid by him.

Any such ryot let into possession otherwise than for a term, or holding over on expiry of term, may not be ejected without notice to quit.

27. (1) When any such ryot has been let into possession otherwise than for a term certain, or having been let into possession for a term certain has held over on the expiry of such term with the consent, express or implied, of his landlord, such ryot may not be ejected unless a notice to quit has been served upon him as hereinafter provided.

Notice to quit when to be given, and how to be served.

(2) Such notice to quit shall be in writing and shall be served through the Civil Court (*a*) in districts or parts of districts in which the Fusli or Umli year prevails, in or before the month of Jeyt; or (*b*) in districts or parts of districts in which the Bengali year prevails, in or before the month of Pous.

Ryot served with notice to quit as provided in Section 27.

28. When a ryot, who in the case mentioned in Clause (1) of Section 27 has, in accordance with the provisions of Clause (2) of the same Section, been served with a notice to quit land, refuses to give up such land from the first day of the year next ensuing after service of such notice; or

or ryot holding after expiry of term without landlord's consent,

when any such ryot, who has been let into possession of land for a term, refuses to give up such land upon the expiry of such term and has not the consent, express, or implied, of his landlord to hold over,

may be sued and ejected by Court. Period of wrongful holding not to count.

the landlord may, within three months from the expiry of the year in which such notice was served or from the expiry of such term, sue to eject such ryot; and, in any case in which such a suit has been instituted, no time subsequent to the year in which such notice was served or subsequent to the said term shall be taken into account so as to give to any such ryot any benefit which is by this Act given to settled ryots;

Such ryot when ejected liable for full letting value of the land, and also for damages.

and such landlord, if he obtains a decree for ejectment against such ryot, shall be entitled to recover in execution of such decree the full letting value of the land for such time as he may be kept out of possession after the expiry of such year or such term as aforesaid, together with reasonable compensation for any other damage or loss that may have been caused to him by being so kept out of possession.

Ryot who does not possess a right of occupancy not liable to pay higher rent, unless there be a written agreement, or unless a notice has been served.

29. (1) A ryot who does not possess a right of occupancy shall not be liable to pay a higher rent than that payable by him for the previous year, unless a written agreement has been entered into by him and his landlord for the payment of such higher rent; or unless a notice demanding such higher rent has been served upon him within the time provided in Clause (2) of Section 27 for the notice therein mentioned.

Such ryot served with such notice may relinquish land. If he do not, he is liable to pay increased rent demanded.

(2) When a notice demanding higher rent has been served upon any such ryot as provided in Clause (1), such ryot, if he is unwilling to pay such enhanced rent, may relinquish the land before the first day of the year next ensuing after service of such notice. If he does not so relinquish the land, he shall be liable to pay the increased rent demanded by such notice from such first day of the year next ensuing; provided that he shall not in any case under this rule be liable to pay more than double the former rent.

Explanation.—When any such ryot is served with a notice to quit or pay a specified increased rent, and he elects to remain in possession of the land mentioned in such notice, the tenancy is not thereby determined, and such notice shall be treated as a notice under Clause (1).

Limit of rent of under-ryot.

30. A ryot who possesses a right of occupancy shall not in any case be entitled to demand or recover from his under-ryot a rent exceeding thirty per cent. of the money value of the gross produce of the land calculated as provided in clause (*c*) of Section 24: nor a rent exceeding by more than four annas in the rupee the rent which such ryot is himself liable to pay to his superior landlord.

Chapter V.—Of the use of Land for Building Purposes.

Ryot may not use land for building or or other purpose inconsistent with use for which it was let.

31. When land used or let to be used for agriculture, horticulture, pasture, or any other similar purpose is held by any ryot, he shall not, without the permission of the landlord of such land, use any portion thereof for building or any other purpose inconsistent with that for which it was used or let to be used as aforesaid: provided that a ryot may without such permission erect upon such land a dwelling-house suitable for the use and occupation of himself and his family, together with such out-houses and offices as may be necessary thereto.

Rule does not extend to erection of a suitable residence.

Possession for twelve years of land let for building or other such purpose gives a right of occupancy.

32. (*a*) When land used or let to be used for building or any purpose other than agriculture, horticulture, pasture, or the like, has been in the immediate possession of a tenant, whether under or without a lease, for the full period of twelve years after the commencement of this Act, such tenant shall, in the absence of any contract to the contrary, acquire a right of occupancy in such land, and shall not be liable to be ejected.

Proviso

Provided that this Section shall not be deemed to apply to any land situate within the boundaries of any Municipality of the first or second class, constituted under the Bengal Municipal Act, 1876.

Explanation.—The possession of the father or other person from whom the tenant inherits shall be deemed to be the possession of the tenant, within the meaning of this rule, for the purpose of acquiring a right of occupancy.

Such interest to be heritable, transferable, and devisable.

(*b*) The interest of the person who has so acquired a right of occupancy shall be heritable, transferable, and devisable, and shall be liable to sale in execution of any decree of the Civil Court.

In default of payment of rent, land with buildings, &c., may be sold.

(*c*) If such tenant makes default in paying the rent of such land, the land together with the buildings or other works thereupon may be brought to sale in execution of a decree for arrears of such rent and shall be subject to the provisions of Section 56: provided that any such tenant may be ejected for a breach of any condition of his tenancy for which breach he is liable to ejectment by virtue of a contract between him and his landlord, and which cannot, in the opinion of the Court, be justly made the ground of compensation to be paid to the landlord.

Rule for enhancing the rent of land used for building or other such purpose.

33. When a tenant has acquired a right of occupancy in any land under the provisions of Section 32, if the rent of such land has not been enhanced during the previous ten years, the landlord thereof shall be entitled from time to time to enhance such rent, so that it may be equal to the rent paid by other tenants for land in the neighbourhood having similar advantages and used for similar purposes, or so that it may be equal to five per centum of the market value of such land.

Chapter VI.—Of Merger.

When same person becomes owner of an estate and a tenure therein, the tenure to be merged in the estate

34. (*a*) When by purchase at a private or public sale, by gift, succession, or will, the same person becomes the proprietor of an estate and the owner of a tenure in such estate, such tenure shall, unless such proprietor can show that he had a contrary intention, be presumed to be merged in the proprietary interest and to be extinguished by the fact of the same person being owner of the estate and the tenure, subject, however, to the following conditions:—

(1) Such person must be owner of the estate and the tenure in the same right and at the same time.

(2) The persumption shall not arise in the case of a minor until he becomes of full age, or in the case of a person of unsound mind until he becomes of sound mind.

(3) Such merger shall not operate to the prejudice of any person having a lien upon such tenure or of any under-tenure-holder or ryot.

(4) Subject to the provisions of the law for the time being in force relating to sales of land for arrears of Government revenue, and subject to the provisions of this Act as to sales for arrears of rent without, or in execution of, a decree, such proprietor shall have the same rights and be subject to the same liabilities as the previous holder of such tenure had or was subject to, in respect of those persons between whom and such tenure-holder the relation of landlord and tenant existed:

Proviso.

provided that when, in the case of two or more persons being coparceners, one or more, but not all, of such persons become the owners of a tenure in such estate, no merger shall take place.

Deed declaratory of intention must be registered within three months and published upon land comprised in tenure.

(*b*) Upon the expiry of three months from the date when such person so became owner of the estate and the tenure, such contrary intention may be proved in the following manner and not otherwise,—that is to say, by the production of a deed declaratory of such intention and duly registered within such period of three months, and by proof that copy of such deed was published in the manner provided in sub-clauses 4 and 5 of Clause (*a*) of Section 218 for the notification therein mentioned.

Proviso.

Provided that if such person become owner of the estate and the tenure before the commencement of this Act, the said period of three months shall run from the commencement of this Act.

Provisions of Section 34 to apply to other cases in which the owner of a superior interest acquires an interest immediately inferior.

35. The provisions of Section 34, so far as they are applicable, shall apply, *mutatis mutandis*, to a tenure-holder acquiring an undertenure of the first degree; to an undertenure-holder of the first degree acquiring an undertenure of the second degree; and so on in order and also to a proprietor, tenure-holder or undertenure-holder acquiring an occupancy holding, the rent of which was previously payable directly to such proprietor, tenure-holder or undertenure-holder.

Proprietary interest merged in paramount title, when an estate is purchased by Secretary of State for India in Council.

36. It is hereby declared to be, and to have always been, the law in the territories under the administration of the Lieutenant-Governor of Bengal that, when the Secretary of State for India in Council acquires an estate by purchase or otherwise, the proprietary interest in the land included in such estate is merged in the paramount title of such Secretary of State, and extinguished by the fact of such proprietary interest and such paramount title meeting in the same person. The third and fourth conditions mentioned in Clause (*a*) of Section 34 shall apply to every such estate acquired by the Secretary of State for India in Council. Nothing contained in this Section shall be construed to interfere with the operation in any such estate of Act

VIII of 1879 passed by the Lieutenant-Governor of Bengal in Council, or of any Act for the time being in force for the recovery of Public Demands.

Illustration.

An estate named Sultanpur is purchased by the Collector of Burdwan on behalf of the Secretary of State for India in Council at a sale for arrears of land revenue. A B, and C are ryots holding land included in this estate, and before the sale they paid certain annual sums as rent direct to the proprietor of Sultanpur. After the sale they are liable to pay the same annual sums to the Secretary of State for India in Council, and such sums are so payable not as rent, but as land revenue.

CHAPTER VII.—OF THE REGISTRATION OF TRANSFERS OF TENURES, UNDERTENURES, AND OCCUPANCY-HOLDINGS.

37. Subject to the provisions of Section 46, every succession to, or transfer of, a tenure or undertenure, or any portion thereof, or of an occupancy-holding shall within six months after such transfer or succession be registered in the sarrishta or Rent-Office of the landlord to whom the rent of such tenure, undertenure or occupancy-holding is payable; and such landlord shall admit to registry and otherwise give effect to every such transfer or succession: provided that no landlord shall be bound to admit to registry or give effect to any division or distribution of the rent of such tenure, undertenure, or occupancy-holding, nor shall any such division or distribution be valid against such landlord without his consent in writing.

Tenant to register transfer of his tenure, undertenure or holding in his landlord's sarrishta. No division of the rent binding on landlord without his consent in writing.

Explanation 1.—The term "transfer" in this section means and includes a transfer by private sale, gift, or exchange, or by sale in execution of a decree.

Explanation 2.—The term "succession" in this section includes devolution by will or by inheritance. In the case of a succession, when there are more heirs than one, all such heirs shall be entitled to have their names registered.

38. Notwithstanding anything contained in Section 37, the landlord may, if he thinks fit, object to register the transfer of any occupancy holding by private sale, and in such case he shall be bound to pay to the transferrer the price at which such transferrer had covenanted to transfer such holding, and such holding shall thereupon be at the absolute disposal of such landlord.

Procedure when landlord objects to register transfer of holding by private sale.

39. In every case of succession to, or transfer of, a tenure, undertenure or occupancy-holding, not being a transfer by sale in execution of a decree for arrears of its own rent, the landlord thereof is entitled to a fee, which shall be paid upon the registration of such transfer or succession. Such fee shall be two per centum upon the annual rent of such tenure or undertenure, and two pice in every rupee upon the annual rent of such occupancy-holding, provided that no such fee shall be less than one rupee or more than one hundred rupees. In default of payment of such fee, such landlord may refuse to register such transfer or succession.

Landlord entitled to fee on transfer of a tenure, undertenure or occupancy-holding.

40. (*a*) In every case of transfer of a tenure, undertenure or occupancy-holding, not being a transfer by sale in execution of a decree, the transferrer shall cease to be, and the transferree shall become, personally liable for the rent of such tenure, undertenure, or holding from and after the date of application for registry.

Effect of transfer and of registration of transfer or succession upon liability for rent.

(*b*) In every case of transfer of a tenure, undertenure or occupancy-holding by sale in execution of a decree for arrears of the rent thereof, the transferree shall be personally liable for such rent from and after the date of the confirmation of such sale by the Court. The former tenant shall be personally liable for such rent up to such date.

(*c*) In every case of transfer of a tenure, or undertenure by sale in execution of a decree not being a decree for arrears of the rent thereof, it shall be the duty of the tenant whose interest is so transferred to give notice of such transfer to his landlord. If he gives such notice within one month after the confirmation of the sale, he shall cease to be, and the transferree shall become, personally liable for the rent from the date of the confirmation of the sale. If he omits to give such notice within such time, he shall remain personally liable for the rent until he gives notice of the transfer.

(*d*) In every case of succession to a tenure, undertenure or occupancy-holding, the person succeeding shall, upon taking possession, be personally liable for such rent from and after the death of the previous tenant.

41. If in any case of transfer of a tenure, undertenure, or occupancy-holding, not being a transfer by sale in execution of a decree, application for registration of such transfer is not made and the proper fee tendered within six months as provided in Section 37, the transferrer shall remain liable for the rent, and the landlord shall not be bound to recognize the transfer. Such landlord shall, however, admit such transfer to registry after the expiry of the said period of six months upon payment of a fee of ten times the amount of the fee receivable under Section 39, provided that no such fee shall be less than ten rupees or more than one thousand rupees.

Consequence of non-registration of transfer other than transfer by sale in execution.

42. (*a*) If in any case of succession to a tenure or undertenure, or in any case of transfer thereof by sale in execution of a decree, application for registration of such succession or transfer is not made by all or any of the transferrees or successors, and the proper fee tendered within six months as provided in Section 37, the landlord shall be entitled to attach and hold possession of such tenure or undertenure.

Consequence of non-registration of a succession, or of a transfer by execution sale, in case of a tenure or undertenure

(*b*) After the attachment of such tenure or undertenure, and until such succession or transfer is registered, such landlord shall be entitled to collect the rents from the undertenure-holders or ryots, and after deducting

Landlord may collect rents of tenure or undertenure attached, but must account for balance after deducting his own rent, &c.

therefrom the cost of the attachment, the expenses of collection, and the rent due to himself, he shall hold the balance in trust for the person entitled by succession or by purchase at such sale.

If collections insufficient, person entitled by succession or purchase liable for the deficiency.

(*c*) If the rents so collected from the under-tenure-holders or ryots are insufficient to discharge the cost of the attachment, the expenses of collection and the rent due to such landlord, the person so entitled by succession or purchase at the execution sale shall be liable for the deficiency, and such landlord may proceed against him for the recovery of the same, subject, however, to the provisions of Section 56.

Landlord shall after six months admit tenure or undertenure to registry on payment of fine.

(*d*) Such landlord shall at any time after the expiry of the said period of six months admit to registry such succession or transfer by execution sale, upon payment of a fee of ten times the amount of the fee receivable under Section 39, provided that no such fee shall be less than ten rupees or more than one thousand rupees.

Consequence of non-registration of a succession, or of a transfer by execution sale in case of a holding.

43. If in any case of succession to a holding, or in any case of transfer thereof by sale in execution of a decree, such succession or transfer is not registered within six months as provided in Section 37, by all or any of the transferees or successors, the landlord shall be entitled to attach and hold possession of such holding, and may cultivate it or let it for cultivation. Such landlord shall at any time after the expiry of the said period of six months admit to registry such succession or transfer by execution sale, upon payment of a fee of ten times the amount of the fee receivable under Section 39, provided that no such fee shall be less than ten rupees or more than one thousand rupees. If the person entitled by succession or by transfer by an execution sale fails to apply for registration and to tender the proper fee before the expiry of the Fusli or Umli or Bengali year, whichever prevails in his district, next ensuing after such succession or transfer, the landlord shall be at liberty to apply to the Civil Court for a declaration that such holding is at his absolute disposal. A notice of such application having been made shall thereupon be issued by the Court to the person entitled by succession or transfer to be registered, and if the succession or transfer is not registered within one month after such notice shall have been served to the satisfaction of the Court, the Court may declare such holding to be at the absolute disposal of such landlord.

If landlord fails or refuses to register, civil suit will lie to compel him. Damages may be awarded where pecuniary loss has resulted.

44. If a landlord fails or refuses to admit to registry and otherwise give effect to a succession to, or transfer of, a tenure, undertenure or occupancy-holding in the manner provided in Section 37, the transferee in any case of transfer by private sale, gift, or exchange, or in any case the transferee or successor may sue such landlord in the Civil Court, and if no sufficient grounds are shown why such succession or transfer should not be registered, such Civil Court shall make a decree directing the registry thereof, and may further award damages in any case in which pecuniary loss has resulted from such neglect or refusal to admit to registry, and otherwise give effect to such succession or transfer.

Transferee or devisee of permanent tenure or undertenure to give security to the extent of half the yearly rent.

45. (*a*) In every case in which a permanent tenure or undertenure is transferred by private sale, gift or exchange, or by sale in execution of a decree, the proprietor or tenureholder, as the case may be, shall be entitled to demand from the transferee substantial security to the amount of half the yearly rent payable for such tenure, and he may refuse to register such transfer until such security has been tendered and accepted.

If security be not furnished within six months proprietor may attach the tenure.

(*b*) If in any case of a transfer such security be required and be not furnished within six months from the date of such transfer, the proprietor or tenure-holder as aforesaid shall be entitled to attach and hold possession of the tenure to the exclusion of the transferee until the said security shall be furnished. The provisions of Clauses (*b*) and (*c*) of Section 42 shall apply to every such attachment.

Application to Civil Court, if security tendered be refused. Court may make order. No appeal from such order.

(*c*) If the security tendered by any transferee is rejected by the proprietor or tenure-holdersas aforesaid, and such transferee is dissatisfied with such rejection, he may make an application to the Civil Court for an order directing such proprietor or tenure-holder to receive such security and register such transfer. Such Court, if satisfied of the sufficiency of the security tendered, may make such order, or, if not so satisfied, may make an order rejecting such application. No appeal shall lie from any such order.

Board of Revenue may prescribe form of Register of successions and transfers. Persons concerned entitled to copies of entries on payment of fee of 4 annas

46. The Board of Revenue may prescribe for any class of landlords a form in which they shall maintain a register of all successions to, or transfers of tenures, undertenures, and occupancy-holdings, the rent of which is payable to such landlords, and may make, and when made, cancel or alter rules for the maintenance of such register; and may further provide a penalty not exceeding fifty rupees for the breach of any such rule. Every person concerned in any such succession or transfer shall be entitled, upon payment of a fee of four annas, to receive a copy of the entry relating thereto made in such register. Such copy shall be signed by such landlord, or by the person who usually receives the rents on his behalf, and shall be sealed with such landlord's seal, when he commonly uses a seal.

Acceptance of rent equivalent to registration in certain cases.

In the case of landlords for whom no form of register is prescribed under this section, the acceptance of rent from the successor or transferee shall be deemed to be equivalent to the registration of the succession to, or transfer of, a tenure, undertenure, or occupancy-holding.

CHAPTER VIII.—OF RENT, INSTALMENTS OF RENT, RECEIPTS FOR RENT, DEPOSIT OF RENT, APPORTIONMENT OF RENT, AND HYPOTHECATION FOR RENT.

Rent of tenure-holder or undertenure-holder payable in what instalments and upon what dates.

47. (*a*) Rent payable by a tenure-holder or undertenure-holder shall be paid upon such dates and in such instalments as are customary or may have been agreed upon between such tenure-holder or undertenure-holder and his landlord; and in the absence of any such custom or agreement, upon the dates mentioned in Clause (*b*) of this Section, and in instalments fixed in the manner provided in the same Clause.

Rent of ryots payable in what instalments and on what dates.

(*b*) Rent payable by a ryot shall be paid in four quarterly instalments, which shall become due upon the first day of Asarh, the first day of Asin, the first day of Pous, and the first day of Cheit respectively. When any agreement has been made or any custom has existed before the commencement of this Act regulating the instalments in which such rent is payable,

(*a*) the amount of the instalment payable on the first day of Asarh shall be the total of the instalments payable according to such agreement or custom in the months Baisakh, Jeyt, and Asarh:

(*b*) the amount of the instalment payable on the first day of Asin shall be the total of the instalments payable according to such agreement or custom in the months Srabun, Bhadro and Asin:

(*c*) the amount of the instalment payable on the first day of Pous shall be the total of the instalments payable according to such agreement or custom in the months Kartick, Aghun, and Pous; and

(*d*) the amount of the instalment payable on the first day of Cheit shall be the total of the instalments payable according to such agreement or custom in the months Magh, Falgun, and Cheit.

In the absence of any such agreement or custom, the portion of the whole rent which shall be paid for each quarterly instalment aforesaid shall be fixed by the Collector after such inquiry as he may deem necessary, and with reference to what he may find to be the most usual practice in the district. Notice of the portion of rent so made payable upon the first day of Asarh, the first day of Asin, the first day of Pous, and the first day of Cheit respectively, shall be given—

by posting a copy of the Collector's order fixing such instalments at every police-station in the district, and in each of the courts or offices of the following officials, that is to say, the District Judge, the Collector, the Magistrate, and all Munsifs, Officers in charge of Sub-divisions and Sub-Registrars of Assurances in the district; and

by proclaiming such order by beat of drum at the head quarters of the district and of every sub-division therein, and in any other places which the Lieutenant-Governor of Bengal may direct.

What to be deemed an arrear of rent. Interest on arrears.

48. Every instalment of rent not paid or discharged before sunset of the day or date upon which it is payable according to the provisions of Section 47, shall be deemed to be an arrear of rent, and shall bear interest from such day or date up to the date of any decree that may be passed therefor at the rate of twelve per centum per annum; and such interest shall be decreed in every case in which any such arrear is recovered in any Civil Court.

Receipts for Rent.

Tenant making payment to his landlord entitled to a receipt. What particulars to be inserted in receipt.

49. (*a*) Every tenant who makes a payment to his landlord of rent, or of any money recoverable as rent, is entitled to obtain thereupon and without delay a written receipt for the amount paid by him. Such receipt shall specify the date of payment; the amount paid, or, where rent is paid in kind, the quantity of produce delivered; the tenure, undertenure, holding, or land in respect of which such rent or money is paid, or produce delivered; the name or names of the person or persons registered in the landlord's sarrishta as the tenant or tenants; and the instalment and year on account of which such payment is admitted to have been made.

Tenant entitled to statement of account at close of the year.

(*b*) Every tenant shall be entitled to receive from his landlord upon the expiry of the Fusli or Umli or Bengali year, whichever prevails in his district, a statement of account showing the tenure, undertenure, holding, or land for which such tenant pays rent to such landlord, and the name or names of the person or persons registered in the landlord's sarrishta as the tenant or tenants; the annual rent payable therefor; the amount of rent in arrear at the beginning of such year; the payments made during the year; the portion of each payment credited to the rent of such year, and the portion credited to the arrears of previous years; and the amount, if any, remaining unpaid at the close of such year.

Penalty for omitting or refusing to furnish receipt or account-statement in form prescribed.

(*c*) Every landlord, who from the commencement of this Act omits or refuses to give to any tenant on demand a receipt or statement of account containing the above particulars shall be liable to the penalty provided by Section 94.

Receipts not containing particulars to be deemed to be an acquittance in full.

(*d*) Every receipt which does not contain the above particulars shall be deemed to be an acquittance in full of all demands for rent up to the date on which the receipt was given.

Deposit of Rent in the Collectorate.

Tenant may in what cases deposit in the Collectorate his rent which has become due.

50. (1) Subject to the conditions specified in Section 51, a tenant may in any of the cases hereinafter mentioned deposit the rent payable by him in the Collectorate treasury of the district, or, where there is a sub-division, in the treasury of the sub-division, within which district or sub-division the tenure, undertenure, holding, or land for and in

respect of which such rent is payable, or any portion thereof is situate; that is to say—

(*a*) when the tenant has reason to believe that the person to whom his rent is payable will not be willing to receive the same, and to grant him a receipt:

(*b*) when such rent is payable to coparceners jointly and such tenant was unable to obtain the joint receipt of such coparceners therefor, and no manager has been appointed by them or by the District Judge:

(*c*) when such tenant entertains a *bonâ fide* doubt as to who is entitled to receive such rent.

Public officer may be specially empowered to receive deposits of rent.

(2) Subject to the conditions and in the cases aforesaid, such rent may also be deposited with any Public Officer specially empowered by the Lieutenant-Governor of Bengal to receive such deposits of the rents of tenures, undertenures, holdings, and lands situate within a specified area. When a Public Officer has been so specially empowered, no deposit of the rent of any tenure, undertenure, holding or land situate within such area shall be received at any Collectorate or Sub-divisional Treasury.

Conditions on which rent may be deposited.

51. Such deposit of rent shall be subject to the following conditions; that is to say—

(*a*) Such rent shall be deposited within fifteen clear days from the first date on which, after such rent fell due, such Treasury or Public Office is open. When the Collectorate or Sub-divisional Treasury or Public Office is closed on the fifteenth day, the deposit may be made on the day on which such Treasury or Public Office re-opens.

(*b*) Such deposit shall be made by presenting a written application accompanied by a fee of 8 annas, and by a written declaration in, or as nearly as possible in, the form A in the second Schedule annexed to this Act. Such declaration shall be made by the tenant, or, if he is not personally cognizant of the facts forming the subject-matter thereof, then by a person so personally cognizant.

(*c*) The rent deposited shall be the full amount of rent due by such tenant to such landlord in respect of the tenure, undertenure, holding or land mentioned in Section 50, and of the interest, if any, due at the time of such deposit.

Receipt to be granted under his seal by Treasury or public officer for rent so deposited, and to be a valid acquittance.

52. The Officer in Charge of the Collectorate Treasury or Treasury of the Sub-division or such Public Officer as aforesaid shall receive any deposit of rent made under any of the circumstances specified in Section 50, and in compliance with the conditions mentioned in Section 51, and shall give a receipt for the same under his official seal. Such receipt shall operate as an acquittance for the rent payable by such tenant and deposited as aforesaid, in the same manner and to the same extent as if such money had been received

(*a*) in case (*a*) of Section 50, by the person specified in the application as the person to whom such rent was payable;

(*b*) in case (*b*) of Section 50 by the coparceners jointly; or

(*c*) in case (*c*) of Section 50, by the claimants jointly or by the claimant entitled to the receipt of such rent.

Notice of the deposit to be given to the persons entitled, or claiming to be entitled, to the rent.

53. (*a*). The Officer in Charge of the Collectorate Treasury or the Treasury of the Sub-division or such Public Officer as aforesaid shall forthwith have posted in a conspicuous place in his office a notification of such deposit, addressed, according to the purport of the application made by the depositor and the declaration therewith presented, to the person entitled to receive such rent or to the coparceners or claimants aforesaid. If no application for payment is made under Clause (*b*) within fifteen days after the posting of such notification, such Officer shall within fifteen days after the expiry of the said fifteen days cause a notice of such deposit to be served upon such person, or coparceners, or claimants as aforesaid. Such notice shall be served free of charge.

and rent deposited may upon their application be paid to such persons on their receipt or joint receipt, or receipt of duly appointed agent.

(*b*). Such rent so deposited may, upon an application being made to this effect be paid (1) to such person entitled to the same; or (2) to such coparceners upon their joint receipt, or, if a common manager be appointed on their behalf by themselves or by the district Judge, to such common manager; or (3) to such claimants upon their joint receipt, or to any of them who has obtained a decree declaring or establishing his title. Any person to whom payment may be made in accordance with these provisions may receive such payment through a duly authorized agent.

Refund to depositor or payment at joint request of him and landlord.

(*c*). If no payment be made under Clause (*b*) for a period of three years from the date of such deposit, the amount deposited may be repaid to the depositor upon his application and on his giving back the receipt mentioned in section 52. Such amount may at any time within such period of three years be paid, on the return of such receipt and upon the joint application of the depositor and of the person or persons entitled to payment under Clause (*b*), in any manner requested in such application.

Apportionment of Rent.

Apportionment of rent in what cases.

54. When two or more persons become separately entitled to separate portions of an area of land which forms the subject of a separate tenancy, and such portions of such area have been or can be divided by metes and bounds, such persons shall be entitled to have such rent apportioned, and after its apportionment to receive separately the shares of rent apportioned upon such portions respectively.

55. Such apportionment may be made by mutual agreement between such persons and the tenant by whom such rent is payble. If such persons and such tenant cannot agree amongst themselves as to the manner in which such apportionment shall be made, the Civil Court may, upon the application of any such persons or of such tenant, proceed to make such apportionment, and may to this end direct a measurement of the whole or any portion of such land.

Apportionment how to be made.

Hypothecation for Rent.

56. (*a*). Every tenure, undertenure, and occupancy holding shall be deemed to be hypothecated for the rent thereof, and such rent shall be a first charge thereupon. When such rent is in arrear, the landlord shall not be entitled to resort to any other process for the recovery thereof, until he has first brought such tenure, undertenure, or holding to sale either in a summary manner or in execution of a decree for such rent, as he is by this Act empowered in that behalf.

Every tenure, undertenure, and holding to be deemed hypothecated for its own rent, which shall be a first charge thereupon.

(*b*). If any such tenure or undertenure, or in any case in which a holding is so saleable, any such holding be brought to sale in execution of a decree for money obtained by a person other than the landlord, such landlord shall be entitled to be first paid out of the sale-proceeds any rent which may be due to him in respect of such tenure, undertenure, or holding: and the balance only of such sale-proceeds after payment of such rent shall be available for the liquidation of the decree-holder's claim, or for distribution among creditors entitled to such distribution.

CHAPTER IX.—OF COPARCENERS.

57. (1) When coparceners, who jointly own an estate, tenure or undertenure, disagree as to the joint management thereof, and in consequence there has ensued or is likely to ensue,

District Judge may direct coparceners, who disagree, to be served with notice to show cause why they should not appoint a common manager.

(*a*) inconvenience to the public, or

(*b*) injury to private rights,

the District Judge may, upon the application in case (*a*) of the Collector, and in case (*b*) of any one having an interest in such estate, tenure or undertenure, direct a notice to be served upon all such coparceners, calling upon them to show cause why they should not appoint a common manager.

Explanation.—In case (*b*) the application may be made either by one or more of the coparceners themselves, or by any other interested person: but no coparcener shall be entitled to apply unless he is actually in possession of the interest he claims, and unless his name and the extent of such interest have been registered under Act VII of 187 , passed by the Lieutenant-Governor of Bengal in Council.

(2) If such coparceners fail to show such cause within one month after service of such notice, or if they show cause which in the opinion of the District Judge is not sufficient, such District Judge may make an order directing such coparceners to appoint a common manager. A copy of such order shall be served upon any coparcener who did not appear before it was made.

If no cause, or cause not sufficient, is shown, District Judge may make an order directing the appointment of a manager.

58. (1) If such coparceners do not within one month after the making of such order, or, where such order has been so served, within one month after such service, appoint a common manager and report such appointment for the information of the District Judge, such District Judge may

If such order be not obeyed, District Judge may appoint manager.

(*a*) direct that such estate, tenure, or undertenure be managed by the Court of Wards in any case in which such Court of Wards assents to undertake the management thereof: or,

(*b*) in any case, appoint a manager, in which event such coparceners shall be bound by such appointment.

(2) The Lieutenant-Governor of Bengal may appoint a person for any district to manage all estates, tenures, and undertenures to which the provisions of this section apply, and when any such appointment has been made, such person shall be appointed manager under sub-clause (*b*) of Clause (1) by the District Judge: unless in the case of any estate the Judge shall think fit to appoint one of the coparceners themselves as manager.

(3) In any case in which the Court of Wards undertakes the management of an estate, tenure, or undertenure under sub-clause *a*) of Clause (1), so much of the provisions of the Court of Wards Act, 1879, as relate to the management of immovable property shall apply to such management.

"The Court of Wards Act, 1879," to apply to management by Court of Wards.

59. In any case in which a manager is appointed under sub-clause (*b*) of Clause (1) of Section 58, the District Judge may settle and from time to time alter the remuneration of such manager, which may be a fixed salary or a percentage of the moneys collected by him as manager. Such manager shall give such security for the proper discharge of his duties as to the District Judge shall appear reasonable and sufficient. For the purposes of management he shall have and be entitled to exercise the same powers as the coparceners jointly might, but for his appointment, have exercised. He shall keep regular accounts, and shall allow the coparceners or any of them to inspect and take copies of such accounts. He shall be removable by the order of the District Judge and not otherwise, and may be removed upon the application of the Collector, or any person interested in the estate, tenure, or undertenure.

Salary of manager. Manager to give security. Powers of manager Duty to keep accounts. Removal.

60. The District Judge may at any time direct that the management be restored to the coparceners, if he is satisfied that such management will be conducted by them jointly without inconvenience to the public or injury to private rights.

Management may be restored to coparceners, if prepared to conduct it properly.

61. Except in the cases hereinafter excepted, rent payable to coparceners shall be paid upon the joint receipt of all such coparceners, or, where a manager has been appointed by them or by the District Judge, upon the receipt of such manager; and all such coparceners must be made parties to any suit brought for the recovery of arrears of any such rent. Any such suit brought by one or more coparceners and not by all, or to which all have not been made parties, shall be dismissed with costs.

Rent to be paid to coparceners on their joint receipt or on that of a manager One coparcener may not sue for his share of rent separately.

Exception 1.—When an agreement has been made between a tenant and one or more of several coparceners with the consent of the other or others of them, that the share of rent to which such one or more coparceners is or are entitled shall be paid directly to him or them, such share of rent shall be so payable and recoverable.

Exception 1—where tenant has contracted to pay a share of the rent separately.

Exception 2.—When a tenant has usually paid to one or more of several coparceners, without objection from the other or others of them, the share of rent to which such one or more coparceners is or are entitled, such share of rent shall be so payable and recoverable.

Exception 2—where tenant has been in the habit of paying a share of the rent separately.

Exception 3.—When a coparcener is unable to obtain his share of the rent payable by a tenant in consequence of collusion between such tenant and the other coparceners, he may sue to recover his share of rent separately, and shall in such suit make such other coparceners defendants.

Exception 3—where coparcener cannot get his share of rent in consequence of collusion.

62. A coparcener may not, otherwise than conjointly with his other coparceners or through a manager appointed by all the coparceners or by the District Judge, bring a tenure to summary sale under the provisions of Chapter XVI, or measure lands in the possession or occupation of the tenants of such coparceners; or enhance the rents of such tenants, or, where a suit is necessary to effect such measurement or enhancement, maintain such suit without making such other coparceners parties thereto.

One coparcener may not bring tenure to summary sale, or measure the lands or enhance the rents of the tenants.

Chapter X.—Of some Miscellaneous Rights of Landlords and Tenants.

63. Proprietors are competent to grant leases, for any period even to perpetuity, and in any form, and at any rent most convenient to the contracting parties and most conducive to their respective interests, of land which was not at the time of the Permanent Settlement held by tenure-holders, undertenure-holders or ryots, or which being so held has since that time come into the *khas* or actual possession of such proprietors, subject, however, to the other provisions of this Act and to the following conditions, and not otherwise:—

Proprietors competent to grant leases for any period, in any form, and at any rent.

(1)—All engagements contracted with tenants shall be specific as to the conditions thereof and as to the amount of rent reserved.

Conditions.

(2)—All impositions upon the tenants under the denomination of *abwab*, *mahtut*, and other appellations in addition to the actual rent, shall be deemed illegal, and shall subject the person imposing them to the penalty provided by Section 93; and all stipulations and reservations for the payment of such shall be null and void.

(3)—No person contracting with a proprietor or employed by him in the management of the collections shall take charge of the lands or collections without a written authority signed by such proprietor.

A proprietor may make a grant of land free of rent, but such grant shall be binding only upon the grantor or his heirs or any person claiming through him or them.

64.—A landlord may not—

(*a*)—under any pretence whatever, impose on his tenants any new cess or other payment not taken into account in fixing the Government revenue, or not sanctioned by law or by ancient custom approved by the Revenue authorities;

Landlord may not impose abwabs on his tenants;

(*b*)—or compel the attendance of his tenants for the adjustment of their rents or for any other purpose; or adopt any means of compulsion for enforcing payment of rent other than the means provided by this Act.

or compel the attendance of his tenants, or enforce payment of rent otherwise than according to law.

65. A landlord is bound to maintain his tenant in the peaceable and quiet possession and enjoyment of the tenure, undertenure, holding or land in respect of which the relation of landlord and tenant exists between them, so long as such relation exists. This duty extends only to interruption or disturbance by the landlord, or any one claiming under or paramount to him. It does not extend to interruption or disturbance by third parties.

Landlord bound to put and maintain tenant in possession.

In the case of a new letting the landlord is bound, upon the tenant's request, to put him in possession of the property demised.

66. A person having an interest in land is not competent to grant a valid lease of such land for a term exceeding his own interest.

Lease may not be granted for term exceeding lessor's interest.

When a lease has been granted for a term exceeding the lessor's interest, such lease is valid to the extent of such interest and is voidable only as to the excess; provided that,

Lease for term exceeding lessor's interest valid to the extent of such interest and voidable as to excess merely.

if such lessor after granting such lease acquire such excess, such lease shall be valid for such excess between such lessor and such lessee and persons claiming under them or either of them respectively.

Lease granted by person having no interest valid to extent of interest subsequently acquired.

If a person grants a lease of land in which he has no interest to a lessee who obtains possession of such land under such lease, and if such person afterwards acquires an interest in such land, such lease shall be valid to the extent of such after-acquired interest between such lessor and such lessee and persons claiming under them or either of them respectively.

Landlord entitled to make general survey and measurement, unless restrained by contract.

67. Subject to the provisions of Section 62, and if not restrained from so doing by express engagement with the occupants of the land, a landlord is entitled to make a general survey and measurement of all land comprised in any estate, tenure, undertenure, or holding of the rents of which he is in receipt, whether such land be rent-paying or rent-free, and is further entitled to enter upon such land for the purpose of making such survey and measurememt.

Illustrations.

(*a*)—A, a proprietor, grants a portion of his estate in patni to B, the patni rent payable to A being fixed at Rs. 500. The ryots, as a necessary consequence, pay their rents to B. Both A and B are entitled to make a general survey and measurement of the lands comprised in the patni lease.

(*b*)—A is the proprietor of an estate. B holds lakhiraj land situated within the local limits of A's estate. A is entitled to measure B's lakhiraj land.

Measurement in suits between landlords and tenants to be made according to Government standard of measurement.

68. (*a*). In any case in which a measurement of land is made by order of a Civil Court or of a Collector in any suit between landlord and tenant, such measurement shall be made according to the Government measure of 14,400 square feet to one standard bigha. If the rights of the parties to such suit are regulated by any different local measure depending upon a standard pole of the pergunnah in which the land is situate, the Government measure shall be converted into such local measure for the purposes of such suit.

Conversion into local measure, when necessary.

(*b*). If any dispute as to the length of such standard pole arises in any suit under this Act, the Collector shall in any suit before himself, or in any suit before a Civil Court on a reference made for this purpose by such Civil Court, determine the proper length thereof. An appeal shall lie from the Collector's decision to the District Judge. If no such appeal be preferred, the decision of the Collector shall be final and conclusive.

Determination of the length of the standard pole in case of dispute.

Tenant may not permanently alter condition of the land. Proviso as to improvements.

69. (*a*). A tenant is bound to use the land which he holds as tenant in a reasonable manner for the purpose for which it was let or has been customarily used. A ryot may not, without the consent of his landlord, materially alter the condition of the land held by him, so as to render it permanently unfit for agricultural or horticultural purposes: provided that any ryot may without such consent make any of the improvements hereinafter specified, subject, however, to the two following conditions:—

(1)—Nothing shall be deemed to be an improvement which does not lastingly facilitate the cultivation of land, or lastingly increase the productive powers of land:

(2)—No improvement which is made without the written consent of the landlord shall be a bar to any enhancement which the landlord might otherwise have been entitled to claim.

(*b*) The improvements referred to in this section are the following:

(1) the making of tanks, wells, and other works for the storage, supply, or distribution of water for agricultural purposes:

(2) works for the drainage of land, or for the protection of land from floods or from erosion or other damage by water:

(3) the reclaiming, clearing, or enclosing of land for agricultural purposes:

(4) the renewal or restoration of any of the foregoing works, or alterations therein, or additions thereto.

Ryot having right of occupancy may not sublet without written permission.

70. A ryot having a right of occupancy may not sublet his holding or any part thereof, without the written permission of his landlord. If, however, he shall sublet without such permission, such demise shall be valid as between such occupancy ryot and his under-ryot: but it shall not operate to debar the landlord from applying for distraint of the produce of the lands so sublet in the manner provided in Chapter XIV of this Act, for the recovery of an arrear of rent due to such landlord.

Relation of landlord and tenant in what cases determined and by what occurrences.

71. Subject to the other provisions of this Act, a tenancy is determined as between the parties thereto by any of the following occurrences in the following cases respectively, that is to say—

(1)—in the case of a lease for a term—by the expiry of such term, unless the tenant holds over without objection made by the landlord, or unless the tenant has a right to the possession of the land otherwise than by virtue of the lease:

By expiry of term—exception.

(2)—in the case of a lease by a landlord whose interest is for a limited time only and who has no power to create a tenancy extending beyond the period of such interest—by the expiry of the term of such interest and the determination of such landlord's possession, unless the tenant

By determination of landlord's limited interest.—Exception.

has a right to the possession of the land otherwise than by virtue of the lease:

(3)—in the case of a ryot holding otherwise than under a lease for a definite term—by relinquishing the whole of the land held or cultivated by him as one holding: provided he has given notice of his intention in writing to the person entitled to the rent of such land or to his authorized agent—in districts or parts of districts where the Fusli or Umli year prevails, in or before the month of Jeyt—and in districts or parts of districts where the Bengali year prevails, in or before the month of Pous—of the year preceding that in which the relinquishment is to have effect.

By relinquishment of land by ryot after notice given.

If such ryot has not given such notice and the land is not let to any other person, he shall continue liable for the rent of such land.

If the person entitled to such rent, or his agent, refuses to receive such notice and to sign a receipt for the same, such ryot may make an application to the Court within the jurisdiction of which the lands or any portion of them are situate, and such Court shall thereupon cause the notice to be served on such person or his agent:

(4)—in the case of a non-transferable holding—by abandonment, when the tenant, having ceased to cultivate the land or pay rent therefor, has absented himself from the neighbourhood, and the landlord elects to treat the tenancy as determined:

By abandonment.

(5)—in the case of a non-transferable holding for which an arrear of rent is due at the end of the Bengali year, or at the end of the month of Jeyt of the Fusli or Umli or Willayutti year—by ejectment from the land in respect of which such arrear is due.

By ejectment of ryot for non payment of rent

No ryot shall be ejected otherwise than in execution of a decree or order of the Civil Court. The right to eject for non-payment of the rent of any one year shall be deemed to have been waived by the receipt of rent for any part of a subsequent year:

(6)—in the case of a farmer or other lease-holder not having a permanent or transferable interest in the land, when an arrear of rent is due and unpaid—by cancelment of the lease and ejectment of the lease-holder.

By ejectment of farmer or lease-holder for non-payment of rent.

No such lease shall be cancelled and no such lease-holder shall be ejected otherwise than in execution of a decree or order of the Civil Court:

(7)—in the case of a ryot not having a right of occupancy or of a tenant for a term holding over after the expiry of his term with the express or implied consent of his landlord—by a notice to quit as provided in Section 27.

By notice to quit in certain cases.

Explanation.—The institution of a suit for ejectment is not equivalent to a notice to quit.

(8)—in the case of any tenant—by disclaimer when in a suit to which his landlord is a party the tenant disclaims such landlord's title and sets up an adverse title in himself or another by matter in writing or reduced to writing by the Court under the provisions of this Act or of *The Code of Civil Procedure*, and such landlord elects within three months of such disclaimer to treat such disclaimer as a forfeiture of the tenancy, and institutes a suit within such period of three months for the ejectment of the tenant accordingly;

By disclaimer when a tenant disclaims his landlord's title and sets up an adverse title.

provided that no such forfeiture by disclaimer shall be allowed in any case in which such tenant having been let into possession by such landlord can show that such landlord's title had expired or been defeated or annulled at the time at which such disclaimer was made: or, not having been let into possession by such landlord, can show that he admitted his title as landlord under a *bonâ fide* misapprehension or mistake.

Illustration.

B, having taken from A, a proprietor, an ijarah of an estate from the 1st Bysack 1271 to the last day of Cheyt 1288 B. S., lets twenty bighas of land, situate in such estate, to C, a ryot, in 1272, and puts C in possession. The term of the ijarah being about to expire, A in Cheyt 1288 gives notice to C not to pay to B any of the rent for 1289. B sues C for the first instalment of the rent of 1289, and C in this suit denies B's title as landlord. B having subsequently obtained from A a ten years' extension of the ijarah, seeks to eject C for so denying his title. C having shown the above facts, is not liable to be ejected.

(9)—when the landlord's estate, tenure, or undertenure is sold for arrears of revenue or rent under any law for the time being in force which entitles the purchaser of such estate, tenure, or undertenure to avoid a lease or determine a tenancy, and such purchaser elects to avoid such lease or determine such tenancy.

By sale for arrears of revenue or rent when purchaser elects to determine.

Explanation.—When the relation of landlord and tenant exists between two persons in respect of any property, the non-payment of rent for such property by such tenant to such landlord shall not of itself determine such relation.

More non-payment of rent does not determine relation of landlord and tenant.

Ryot ejected from land entitled to the away-going crops, and to enter on land to remove them.

72. When a ryot is ejected in execution of a decree from land upon which there are, at the time of such ejectment, growing crops or other ungathered products of the earth, which such ryot, but for such ejectment, would have been entitled to reap or gather, such ryot shall, notwithstanding such ejectment, be entitled to reap or gather such crops or products, and may use the land for the purpose of tending, reaping, gathering, and removing the same; and in the event of his so doing he shall be liable to pay a reasonable rent for the time during which he uses the land as aforesaid:

Landlord may, if he wishes, purchase such crops or products at a valuation to be made by Court in case of dispute.

provided that the landlord may purchase such crops or products at a fair valuation if, when he applies for execution of his decree, he gives notice of his intention to do so. In any case in which the landlord and the ryot cannot agree as to such valuation, the Court may, upon the application of either of them, determine the value of such crops or products, and the order so determining such value shall have the force of a decree.

Chapter XI.—Of special provisions for Behar.

Operation of this Chapter. Lieutenant-Governor may withdraw any district.

73. Notwithstanding any custom or contract to the contrary, the provisions of this Chapter shall be in force in Behar, and shall supersede any other provisions of this Act which may be inconsistent with the same.

It shall be lawful for the Lieutenant-Governor of Bengal, by a notification published in the *Calcutta Gazette*, to withdraw any district, or portion of a district, in Behar, from the operation of all or any of the provisions of this Chapter; and in the same manner to revoke or modify such notification.

What lands shall be recognized as zeerat lands.

74. The following descriptions of lands shall be recognized as zeerat lands:—

(*a*) Lands which have been declared to be zeerat by a final decree of the Civil Court:

(*b*) Lands recognized as zeerat by established village custom:

(*c*) Lands which are proved to have been occupied as zeerat for twelve continuous years immediately before the commencement of this Act, whether such lands have been cultivated by the proprietor himself or by a tenant.

Lieutenant-Governor may order survey and register of zeerat lands.

75. The Lieutenant-Governor of Bengal may direct that a survey and register shall be made of the zeerat lands in any district or part of a district of Behar.

Survey how to be made.

76. The survey shall be made by the Collector or by an officer authorized by the Collector in that behalf under such rules as may from time to time be prescribed by the Board of Revenue for the conduct of such survey: and the Collector or such officer may exercise any of the powers conferred upon a Collector by the Bengal Survey Act of 1875, except the powers in Part IV of the said Act, relating to the apportionment and recovery of expenses.

Register how to be made and published.

77. The Collector shall make an accurate register, in such form as the Board of Revenue may from time to time prescribe, of such lands in each village as he may ascertain to be zeerat lands within the meaning of this Chapter: and copies of such register shall be published in such manner as the said Board may direct.

Provision for appeals

78. Any person dissatisfied with any entry in such register may appeal to the Commissioner within one month after such publication: and the Commissioner shall make enquiry as he may consider necessary, and may direct the register to be amended in such manner as he shall think fit. An appeal shall lie to the Board of Revenue from any order passed by the Commissioner under this Section, if preferred within one month from the date of such order.

Register to be submitted to Board of Revenue.

79. If no appeal is preferred, or after such appeals as have been preferred have been disposed of, the Commissioner shall submit to the Board of Revenue a copy of the register, with a report showing how the survey and register have been made: and if the Board are satisfied that the register is correct, they shall transmit the same to the Lieutenant-Governor for his approval.

Mode of approval of register.

80. If the Lieutenant-Governor approves such register, he may direct that his approval of the same shall be published by a notification in the *Calcutta Gazette*: provided that such approval shall not in any case be given until after three months from the date of the publication under Section 77.

Consequence of publication of approval.

81. From and after the date of such publication in the *Calcutta Gazette*, no evidence shall be received in any Court that any lands not specified in such register are zeerat lands.

Right of occupancy in zeerat lands, how limited.

82. A right of occupancy cannot be acquired under the provisions of this Act in zeerat lands: but a right of occupancy in such lands, acquired before the commencement of this Act under any enactment hereby repealed, shall not be lost by the operation of this Section.

Rent of ryots payable in what instalments and on what dates.

83. In the absence of any written specification of the times of payment, the rent payable by a ryot shall be paid in three instalments which shall become due on the last day of Assin, the last day of Pous, and the last day of Cheit, respectively. The portion of the whole rent which shall be payable for each instalment aforesaid shall be fixed by the Collector under such rules as the Board of Revenue may prescribe in that behalf: and notice of the portion of rent so made payable shall be given in the manner directed in Clause (*a*) of Section 47.

84. No person not having a permanent transferable interest, or an interest not less than a life-interest in the land, shall be entitled to enhance the rent of any ryot except on the ground of land having been added to his holding by alluvion, nor (except on such ground) to maintain any suit for the enhancement of the rent of a ryot.

What persons may not enhance ryots' rent. Exception.

85. No lease-holder or farmer shall be entitled, in virtue of his lease or farm, to demand from any ryot the payment of any arrears of rent which became due before the date on which such lease or farm took effect.

Lease-holder may not collect arrears.

86. No lease-holder or farmer shall be entitled, in virtue of his lease or farm, to collect rent from any ryot in excess of the amount annually payable by such ryot during the two years immediately preceding the year in which such lease or farm took effect: except on the ground of land having been added by alluvion to the holding of such ryot.

Lease holder may not collect rent in excess of amount previously payable. Exception.

87. Any suit brought in contravention of the provisions of the three next preceding Sections shall be dismissed with costs, and the Court shall award to the defendant the compensation specified in Section 97.

Suit of contravention of preceding Section, to be dismissed with costs and damages.

88. Wherever rent is taken by the division of the produce in kind or by estimate or appraisement of the standing crop, or other procedure of a like nature, requiring the presence both of the ryot and landholder either personally or by agent, if either landholder or ryot, personally or by agent, neglect to attend at the proper time, or if there is a dispute as to the amount or value of the crop,

When rent is payable in kind or in money value of a portion of the crop, landlord or tenant may, in case of dispute, petition Collector to depute an officer. Procedure to be followed thereupon.

an application may be presented by either party to the Collector requesting that a proper officer be deputed to make the division, estimate, or appraisement.

On receiving such application, the Collector shall issue a written notice to the opposite party or his agent to attend on the date, and at the place specified in the notice, and shall depute an officer before whom such division, estimate, or appraisement shall be made.

If, on or before the date appointed, the dispute has not been amicably adjusted, three residents of the village shall be appointed assessors—one by each of the parties, and one by the officer deputed to divide the grain or estimate or appraise the crops; and the officer deputed shall decide the amount of rent payable by their award, and shall give to the party applying a written authority to divide the grain or cut the crops:

Provided that if either party fail to attend, the officer deputed shall nominate an assessor on his behalf.

The officer deputed shall report his proceedings to the Collector, who shall determine the amout of costs properly incurred under this section, and the share of the costs to be paid by either party.

89. When the rent payable for land is the equivalent money value of a fixed proportion of the actual gross produce thereof and such equivalent money value is determined by an estimate or appraisement (*danabandi*) of the standing crop or by some similar proceeding, the *danabandi* or appraisement papers shall, within fifteen days after the making of the appraisement, be lodged in the office of the Collector of the district.

Danabandi or appraisement papers to be deposited in the Collector's office within fifteen days after the appraisement.

90. Every ryot having a right of occupancy shall be entitled to have rent, payable in the manner mentioned in Section 88, commuted into an annual money rent payable without direct reference to the crops produced at each harvest, but liable to enhancement under the provisions of this Act. Such annual money rent shall be fixed at the discretion of the Court, either according to the prevailing money rent payable by the same class of ryots for land of a similar description and with similar advantages in the vicinity, or else according to the average value of the landlord's share of the actual gross produce for the preceding five years. In this latter case, a deduction shall be made from such average value in consideration of the whole risk of cultivation being taken by the ryot. Such deduction shall not be less than 25 or more than 50 per cent. of the said average value, and shall ordinarily be 33 per cent.

Ryot entitled to have rent, payable in kind or in equivalent value of share of gross produce, commuted to an annual money rent. Principle upon which such commutation should be made. Procedure for making.

Explanation 1.—Such commutation shall not be deemed to be an alteration of the rate of rent within the meaning of Chapter II of this Act.

Explanation 2.—A ryot may not apply, under this section, for the commutation of the rent of less than the whole of such lands as aforesaid occupied by him as one holding.

91. The possession of the growing crops on land of which the rent is payable in the manner mentioned in Section 88 is declared to be vested in the tenant. and the landlord shall not be entitled to interfere in any way with the cutting, harvesting, or disposing of such crops, except by an application to the Collector under Section 88. Any landlord or other person so interfering shall be deemed to have committed criminal trespass, and shall be subject to the penalties provided for that offence, in addition to any damages which may be awarded against him in a civil suit.

Possession of crops on land of which the rent is payable in kind, declared to be vested in the tenant. Penalty for disturbance

92. The provisions of the two last preceding Sections shall not be deemed to apply to lands duly registered as zeerat lands in the manner hereinbefore provided.

Exception of zeerat lands.

Chapter XII.—Of Damages and Penalties.

93. Every tenant, from whom any sum of money or any portion of the produce of his land is illegally exacted by his landlord in excess of the rent

Damages for exaction by landlord, from tenant of sum in excess of the rent payable.

lawfully payable by such tenant, shall be entitled to recover from such landlord such sum so exacted together with damages not exceeding double such sum.

Damages recoverable for withholding receipts for rent.

94. Every tenant, from whom a receipt is withheld for any sum of money paid by him as rent, shall be entitled to recover from the person receiving such rent damages not exceeding double the amount so paid.

Damages for extorting payment of rent by duress.

95. If payment of rent, whether the same be legally due or not, is extorted from any tenant by illegal confinement or other duress, such tenant shall be entitled to recover such damages, as may be deemed a resonable compensation for the injury done him by such extortion. An award of compensation under this section shall not bar or affect any penalty or punishment to which the person practising such extortion may be subject by law.

The Court may award damages not exceeding 25 per cent. on rent not paid without reasonable or probable cause.

96. If in any suit brought for the recovery of arrears of rent, it shall appear to the Court that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount of rent due by him, or to deposit before the institution of the suit, such amount in the Collectorate as provided in Section 50, it shall be lawful for the Court to award to such plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twenty-five per centum on the amount of rent decreed, as such Court may think fit. Such damages, when awarded, as well as the amount of rent and costs decreed in the suit, shall carry interest at the rate of six per centum per annum from the date of decree until payment or realization thereof.

Explanation.—The Court may not give, in addition to damages, interest before decree upon the rent decreed.

The Court may award compensation not exceeding 25 per cent. on amount claimed to defendant improperly sued for rent.

97. If in any suit brought for the recovery of arrears of rent it shall appear to the Court that the plaintiff has instituted such suit against the defendant without reasonable or probable cause, or that the defendant had duly deposited in the Collectorate, in accordance with the provisions of Section 50, the full amount which the Court shall find to have been due to the plaintiff on the date of such deposit, it shall be lawful for such Court to award to the defendant, by way of compensation, such sum, not exceeding twenty-five per centum on the whole amount claimed by the plaintiff, as such Court may think fit; and such sum, with interest at the rate of six per centum per annum until payment or realization thereof, shall be recoverable from the plaintiff in like manner as sums ordered to be paid by decrees of such Court.

Chapter XIII.—On Limitation.

Suits and applications in Third Schedule to be instituted and made within the time there prescribed: otherwise to be dismissed.

98. Subject to the provisions of Section 99, the suits, appeals, and applications specified in the Third Schedule annexed to this Act shall be instituted and made within the time prescribed in such Schedule for each of them respectively; and every such suit or appeal instituted, and application made, after the period of limitation so prescribed, shall be dismissed, although limitation has not been pleaded.

Portions of the Indian Limitation Act applicable to such suits and application.

99 The following portions of *The Indian Limitation Act*, 1877, shall apply to the suits, appeals, and applications mentioned in Section 98, that is to say—of Part II, the Explanation to Section 4 and Section 5; and the whole of Part III.

Computation of time where, until termination of litigation as to their mutual rights, landlord could not previously have sued tenant for rent.

100. When the result of litigation between any persons is such that they stand in the relation of landlord and tenant to each other and have stood in this relation while such litigation was pending, but, until their mutual rights were finaly determined by such litigation, such landlord was unable to sue such tenant for rent, the period of limitation for suing for any such rent shall be computed from the termination of such litigation.

Chapter XIV.—Of Distraint.

Arrears of rent may be recovered by distraint under certain rules. Provisos.

101. The produce of all land in the occupation of a cultivator shall be deemed to be hypothecated for the rent payable in respect thereof, and when an arrear of rent is due from any cultivator, the person entitled to receive rent immediately from such cultivator, instead of suing for the arrear as hereinafter provided, may recover the same by distraint and sale of the produce of the land in respect of which the arrear is due under the rules contained in this Chapter.

Provided always—

(*a*) that when a cultivator has under Section 50 of this Act deposited his rent or has given security for the payment thereof, the produce of the land for the rent of which such deposit has been made or security given shall not be liable to distraint.

(*b*) that no sharer in a joint estate, tenure, or under-tenure in which a division of land has not been made amongst the sharers shall apply for an order of distraint otherwise than through a manager authorized to collect the entire rent of the land in respect of which the arrear is claimed.

(*c*) that no proprietor, or manager as defined under the Bengal Land Registration Act, 1876, or mortgagee, to whom arrears of rent are due, shall be entitled to apply for an order of distraint unless his name and the extent of his interest in the land in respect of which such arrears are due shall have been duly registered under the provisions of the said Act.

No distraint in certain cases.

102. Distraint shall not be made for any arrear which has been due for a period longer than one year before the application for an order of distraint nor for the recovery of any sum in excess of the rent payable for the same land in the preceding year, unless the rent has been enhanced under a written engagement for the payment of the excess executed by the cultivator or by an order under this Act.

Standing and gathered crops liable to distraint while in possession of the cultivator.

103. Standing crops and other ungathered products of the earth or crops or other products when reaped or gathered and deposited in any threshing floor or place for treading out grain or the like, whether on the field or within a homestead or storehouse, may be distrained under the provisions of this Act. But no such crops or products other than the produce of the land in respect of which an arrear is due or of land held under the same engagement, and no grain or other produce after it has passed out of the possession of the cultivator, and no other property whatsoever, shall be liable to be distrained under this Act.

Application for distraint how to be made.

104. Application for distraint shall be made to the Court having jurisdiction to entertain a suit for the rent of the land in respect of which the application is made. Every such application shall be in writing and be liable to a Court-fee the same in amount as would be payable in a suit instituted for the recovery of the arrears of rent therein claimed, and shall be signed and verified in the manner prescribed by the Code of Civil Procedure for the signing and verification of plaints. Provided that if the application so verified shall contain any averment which the person making the verification shall know or believe to be false or shall not know or believe to be true, such person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

Particulars to be given.

105. Every such application shall specify the nature and approximate value of the produce to be distrained, and in cases where such produce is of the nature of standing crops or other ungathered products of the earth, such application shall specify the position of the lands upon which such crops or products are situate, by setting forth of boundaries or in such other manner as may suffice for their identification, and the applicant or his duly constituted agent shall at the time of filing such application, or so soon after as the Court may permit, file also in Court such documentary evidence as he may consider necessary for the purposes of such application.

Application may include claims against not more than five tenants of the same landlord in one village

106. An application for distraint may include claims against any number of tenants not exceeding five.

Provided that the lands for which arrears of rent are claimed are held by such tenants from the same landlord and are situate in the same village. Provided also that the application shall contain all the particulars required under the provisions of this Act in respect of the claim for arrears made against each of the tenants mentioned in such application.

Court may reject application, or call for further evidence.

107. The Court may examine the applicant or his duly constituted agent, and if it consider the application inadmissible, it may reject the application or in its discretion permit the applicant to furnish additional evidence in support of such application.

Procedure if application is admitted.

108. If the application is admitted, the Court shall depute an officer to distrain the crops or other produce of the land in respect of which the arrear is due, and such officer shall proceed to the spot specified in such application and shall distrain the crops and other product accordingly. Notification of such distraint shall be given in accordance with rules to that effect to be hereafter made by the Board of Revenue.

Defaulter to be served with written demand and account.

109. The distraining officer shall at the time of making such distraint serve the defaulter with a written demand for the arrear due and the costs incurred in making such distraint together with an account exhibiting the grounds on which such distraint is made. The demand and account shall, if practicable, be served personally on the defaulter, but if he abscond or conceal himself or cannot otherwise be found, such officer shall affix the same or a copy of the same on the outer door of the house in which such defaulter usually resides.

Distrained crops may be reaped and stored by cultivator,

110. Standing crops and other ungathered products may notwithstanding the distraint, be reaped and gathered by the cultivator, and he may store the same in such granaries or other places as are commonly used by him for the purpose.

or, in his default, by applicant for distraint.

111. If the cultivator neglect to do so, the applicant for distraint shall cause the said crops or products when ripe to be reaped or gathered, and in such case shall store the same in such granaries or other places as aforesaid, or some other convenient place in the neighbourhood. In either case the distrained property shall be placed in the charge of the distraining officer or of some other person by him appointed.

Owner of distrained property may deposit amount of claim.

112. If at any time after distraint has been made and prior to the sale of the distrained property, as hereinafter provided, the owner of such distrained property shall deposit in the Court issuing the order of distraint, or in the hands of the distraining officer, the amount specified in the demand served upon such owner together with all further costs which may have been incurred after the service of such demand, such Court or officer, as the case may be, shall grant a receipt for the same and shall forthwith withdraw the distraint. The distraining officer receiving such deposit shall forthwith pay the same into the Court which issued the order of

distraint. The receipt so granted shall afford a full indemnity to the owner of the distrained property against any subsequent claim for the arrears of rent on account of which such distraint was made.

Deposit to be paid to applicant for distraint unless owner of distrained property institutes suit to contest distrainer's claim.

113. After the expiration of one month from the date of such deposit being made, the Court shall pay over the same to the applicant for distraint, unless in the meanwhile the owner of the property distrained shall have instituted a civil suit against such applicant, contesting the right of such applicant to receive the same.

Sale proclamation to be issued unless demand is satisfied.

114. Unless the demand with all costs of the application for distraint be immediately satisfied, the distraining officer shall issue a proclamation notifying that he will proceed, on a day to be specified in the proclamation, and not being less than three or more than seven days after the time of making the distraint, to sell the distrained property by public auction. Such proclamation shall be stuck up on a conspicuous place in the village in which the land is situated for which arrears of rent are claimed, and shall also specify the particulars of the property distrained, the demand for which it is to be sold, and the place where the sale is to be held.

Place of sale.

115. The sale shall be held at the place where the distrained property is or at the nearest place of public resort, if the distraining officer is of opinion that it is likely to sell there to better advantage.

Manner of sale.

116. The property shall be sold by public auction in one or more lots, as the officer holding the sale may think advisable, and if the demand with the costs of distraint and sale be satisfied by the sale of a portion of the property, the distraint shall be immediately withdrawn with respect to the remainder

Postponement of sale.

117. If on the property being put up for sale a fair price (in the estimation of the officer holding the sale) be not offered for it, and if the owner of the property or some person authorised to act in his behalf apply to have the sale postponed till the next day, or (if a market be held at the place of sale) the next market day, the sale shall be postponed until such day, and shall be then completed, whatever price may be offered for the property.

Payment of purchase-money.

118. The price of every lot shall be paid in ready money at the time of sale or as soon thereafter as the officer holding the sale thinks necessary, and in default of such payment the property shall be put up again and sold.

Certificate to be given to purchaser.

119. When the purchase-money has been paid in full, the officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid.

Proceeds of sale, how to be applied.

120. From the proceeds of every sale of distrained property under this Act, the officer holding the sale shall pay to the applicant for distraint the expenses incurred by such applicant on account of such distraint calculated on a scale of charge prescribed by rules hereafter to be made by the Board of Revenue for regulating such charge.

The remainder shall be applied to the discharge of the arrears for which the distress was made with interest thereon up to the day of sale, and the surplus (if any) shall be delivered to the person whose property has been sold.

Selling officer may not purchase.

121. Officers holding sales of property under this Act, and all persons employed by, or subordinate to, such officers, are prohibited from purchasing either directly or indirectly any property sold by such officers.

Person whose property has been distrained may sue for damages.

122. Any person whose property has been distrained for the recovery of a demand not justly due or of a demand due or alleged to be due from some other person, may institute a suit under this Act against the applicant for such distraint, to recover damages for the illegal distress or sale of his property.

Proviso.

Provided that in such suit the burden of proof shall be on such applicant in the same manner as if he had himself instituted a suit for the arrear of rent alleged to be due.

Person illegally distraining or selling property liable to suit for damages, and to penalties for criminal trespass.

123. If any person other than an officer appointed on that behalf by the Court, distrains or sells, or causes to be distrained or sold, any property under colour of this Act, the owner of the property so distrained or sold, may institute a suit under this Act to recover damages from such person for any injury which the plaintiff has sustained from the distraint or sale.

And such person shall be said to have committed a criminal trespass and shall be subject to the penalties provided for that offence in addition to any damages which may be awarded against him in such suit.

Crops of defaulter or of his under-ryot may be distrained. Proviso.

124. All crops or products declared liable to distraint under this Act shall be liable to distraint whether they belong to the person from whom the arrear of rent is due or to any under-ryot of such person, and no under-ryot (except such under-ryots as are specified in Section 126) shall be entitled to institute a suit to recover possession of such crops or products, or for damages for the distraint and sale of the same under this Act.

Provided that the under-ryot may pay to the distraining officer the arrears for which distraint has been made and all costs of and incidental to the making of such distraint, and on receiving such payment the distraining officer shall grant a receipt for the same to such under-ryot, and the receipt so granted shall be a full

indemnity against any claim by whomsoever made for the recovery of the arrears of rent on account of which such receipt was given.

Amount paid by under-ryot for his lessor may be deducted from his rent.

125. When an under-ryot has made any payment prescribed in the previous Section, he shall be entitled to deduct the amount so paid from the rent due by him to the person upon whose default the distraint was made, and the receipt granted by the distraining officer to such under-ryot shall be a full indemnity against the claim of such defaulter for the recovery of such proportion of the rent deducted by the under-ryot.

Written permission to sublet is an abandonment of the right to distrain.

126. If any ryot shall have obtained permission in writing from his landlord to sublet the whole or any part of his holding, the landlord shall be held to have abandoned his right to distrain the crops or other products of any land which may be sublet in accordance with such permission, and nothing in the two Sections immediately preceding shall be held to apply to any under-ryots holding lands under such permission.

In cases of double distraint, claim of superior landlord to be a primary charge.

127. In all cases where the crops or other products, the property of an under-ryot, have been subjected to distraint

by the person entitled under this Act to apply for such distraint in respect of arrears of rent due to such person by the lessor of the under-ryot, and

by such lessor in respect of arrears of rent due to him by such under-ryot,

the claim of the person entitled under this Act to apply for distraint in respect of arrears due from such lessor shall, irrespective of the order in which such distraint was made, be a primary charge upon the proceeds of such distraint.

Lieutenant-Governor may suspend provisions of this Chapter.

128. It shall be lawful for the Lieutenant-Governor by an order published in the *Calcutta Gazette* to suspend the provisions of this Chapter in any district or part of a district for such time as he may think proper. So long as such order continues in force no Court shall receive any application for distraint for arrears of rent due on lands situate within a district or part of a district included within such order.

Chapter XV.—Of Proceedings to enhance the Rent payable in Money by Ryots having a Right of Occupancy, or by Tenure-holders or Undertenure-holders.

Enhancement proceedings to be commenced by plaint. Such plaint when to be filed, if intended to affect the rent of the following year.

129. A landlord desiring to enhance the rent of a ryot having a right of occupancy upon any one or more of the grounds specified in Section 23, shall present a plaint to the Civil Court or such officer as it appoints in this behalf. Such plaint shall, in order to affect the rent of the following year, be presented (*a*) in districts or parts of districts in which the Fusli or Umli year prevails, in or before the month of Baisakh; or (*b*) in districts or parts of districts in which the Bengali year prevails, in or before the month of Aughan.

Plaint to set forth the grounds of enhancement.

130 Such plaint shall set forth the ground or grounds specified in Section 23, upon which enhancement is claimed in respect of each holding mentioned therein.

Particulars to be given when enhancement is claimed on the *first* ground.

(1) When enhancement is claimed on the first of such grounds, the plaint shall further state—

(*a*) the quantity of land held by the ryot, and, when such land consists of different classes, the quantity of each class;

(*b*) the rate of rent actually paid for such land or each class of such land; and

(*c*) the alleged prevailing rate which the plaintiff claims instead of the rate actually paid.

Particulars to be given when enhancement is claimed on the *second* ground.

(2) When enhancement is claimed on the second of such grounds, the plaint shall further state—

(*a*) the quantity of land for which rent was previously paid by the ryot, and when such land consists of different classes, the quantity of each class;

(*b*) the amount of rent paid for such land and the rate or rates at which such rent was calculated for each class;

(*c*) the quantity of land in excess of that specified under (*a*) for which the plaintiff claims to receive additional rent;

(*d*) the amount of additional rent claimed for the land specified under (*c*); and

(*e*) the total rent claimed, that is to say, the total of (*b*) and (*d*).

Particulars to be given when enhancement is claimed on the *third* ground.

(3) When enhancement is claimed on the third of such grounds, the plaint shall further state—

(*a*) the quantity of land held by the ryot, and when such land consists of different clauses, the quantity of each class;

(*b*) the amount of rent previously paid for such land, and the rate or rates at which such rent was calculated;

(*c*) the cause and extent of the alleged increase in the productive powers of the land; and

(*d*) the enhanced rent or rates of rent which the plaintiff claims to receive in consequence of such increase.

Particulars to be given when enhancement is claimed on the *fourth* ground.

(4) When enhancement is claimed on the fourth of such grounds, the plaint shall further state—

(*a*) the amount of rent previously paid for the land held by the ryot, and the rate or rates at which such rent was calculated;

(*b*) the prices of produce in the locality at the time when the rent was fixed, or at such subsequent time as may be taken for comparison;

(*c*) the increased prices of produce now prevailing in the locality;

(*d*) the enhanced rent, or rates of rent, which the plaintiff claims to receive in consequence of such increased prices.

The provisions of *The Code of Civil Procedure* to apply to suits for enhancement brought in the Civil Courts.

131. (*a*) The Civil Court to which any such plaint has been presented shall proceed to deal therewith in accordance with the provisions of *The Code of Civil Procedure*, and all the proceedings of such Court in the suit so instituted by the presentation of such plaint, shall be governed by the provisions of the said Code.

Civil Court to decide all questions fairly raised between the parties.

(*b*) Such Court shall have full power to decide upon the landlord's right to enhance and upon the fairness of the enhanced rent demanded, and may declare the landlord entitled to such enhanced rent or to any less rent which may be found to be fair and equitable, and shall decide all questions directly raised between the parties so as to avoid, as far as may be possible, a multiplicity of suits. In any case in which the Court decrees enhancement of rent, such enhancement shall take effect from the commencement of the Fusli or Umli or Bengali year following that in which the plaint was presented to the Court.

Illustrations.

(*a*) *A* sues to enhance the rent of *B*, a ryot having a right of occupancy, on the first of the grounds specified in Section 23, alleging that *B* holds 20 bighas of land at one rupee per bigha and pays a rent of Rs. 20; that the prevailing rate, payable by the class of ryots to which *B* belongs for land of a similar description and with similar advantages in the vicinity, is one rupee and eight annas per bigha; and therefore that *B's* rent should be enhanced to Rs. 30. *B* pleads that he holds 15 bighas only, and denies that such prevailing rate is more than the one rupee per bigha which he pays. *A* fails to prove that the prevailing rate is one rupee and eight annas. The Court shall nevertheless decide whether *B* holds 15 or 20 bighas, and whether his rent is Rs. 15 or Rs. 20.

(*b*) *A* sues to enhance the rent of *B*, a ryot having a right of occupancy, on the second of the grounds specified in Section 23, alleging that *B* previously held ten bighas of land at one rupee and eight annas per bigha, that eight more bighas have been recently added by alluvion to *B's* holding; and that *B* should pay a rent of Rs. 27 instead of Rs. 15 which he previously paid. *B* denies that any land has been added to his holding by alluvion, and alleges that he previously held not ten, but fifteen bighas, and that the rate of rent was one rupee, not one rupee and eight annas. There is no satisfactory evidence of alluvion. The Court shall nevertheless try whether *B* previously held ten or fifteen bighas, and whether the rate of rent was one rupee or one rupee and eight annas.

(*c*) *A* sues to enhance the rent of *B*, a ryot having a right of occupancy, on the ground that the productive powers of the land held by *B* have increased otherwise than by the agency or at the expense of *B* in consequence of the construction by Government of a canal which has drained and improved *B's* land. *B* denies that the productive powers of his land have increased, and alleges that his land is not liable to enhancement as it is held at a rate which has not been changed since the time of the Permanent Settlement. *A* fails to prove the alleged increase of the productive powers of the land. The Court shall nevertheless try whether *B's* land is held at a rate of rent which has not been changed since the time of the Permanent Settlement, and so is protected from enhancement.

(*d*) *A* sues to enhance the rent of *B*, a ryot having a right of occupancy, on the fourth of the grounds specified in Section 23, alleging that *B's* previous rent was fixed in 1870 at Rs. 20, and that in 1875 the price of paddy in the locality was one rupee per maund; that the present price of paddy in the locality is one rupee eight annas, and that therefore *B* should pay a rent of Rs. 30. *B* denies that the price of paddy was one rupee per maund in 1875, and alleges that he holds under a written lease for a term of 30 years from 1870, which has not expired; and that a rent of Rs. 30 would amount to more than one-fourth of the average annual value of the gross produce of the land of his holding. *A* fails to prove the alleged increase of price. The Court shall nevertheless try whether *B* holds under a written lease for a term which has not expired. But it shall not be necessary for the Court to try whether a rental of Rs. 30 would amount to more than one-fourth of the average annual value of the gross produce of *B's* holding.

Of the Preparation of a Table of Rates.

Lieutenant-Governor may direct preparation of a Table of Rates.

132. It shall be lawful for the Lieutenant-Governor to direct, by an order to be published in the *Calcutta Gazette*, that for any district, or sub-division of a district, or pergunnah, or other local area, the Collector shall prepare a Table of Rates, showing the rates of rent equitably payable by ryots having a right of occupancy for each class of lands specified in the said Table.

Assessors to be appointed.

133. In the preparation of the said Table, the Collector shall be assisted by such assessors as the Lieutenant-Governor shall appoint in that behalf.

What particulars to be given in the Table.

134. Every such Table of Rates shall specify the following particulars, namely—

(1) The several classes of land ordinarily recognized in the said district or other local area as bearing different rates of rent in consequence of the different productive powers of the lands.

(2) The rates of rents now ordinarily paid by ryots having a right of occupancy for each of such classes of land.

(3) The rates which the Collector may find to be equitably payable by such ryots for each of such classes.

(4) If the Collector finds a higher rate to be equitably payable for any class of land than the rate now ordinarily paid, the grounds upon which such higher rate is found to be payable.

(5) The amount of the gross produce of the land of each class, and the average value thereof, calculated in accordance with the provisions of Clause (*c*) of Section 24.

Board of Revenue may prescribe rules.

135. In the preparation of the Table of Rates, the Collector shall be guided by such rules as the Board of Revenue shall prescribe in that behalf.

Collector may exercise powers of Civil Court.

136. The Collector may at any stage of his proceedings exercise any of the powers of a Civil Court in respect of summoning, causing the attendance of, and examining witnesses, and in respect of causing the production of documents: and the provisions of *The Code of Civil Procedure* applicable to these matters shall apply to a Collector exercising such powers.

137. The particulars in the Table of Rates shall be given for the Government standard bigha of 14,400 square feet. If any different local measure prevails in the area covered by the said Table, the particulars shall also be given for such local measure.

What standard to be used.

138. When the Collector shall have prepared the Table as aforesaid, he shall publish the same within the local area affected thereby, in such manner as the Board of Revenue shall direct.

Local publication of the Table.

139. Any person objecting to any entry in the Table of Rates shall be at liberty to petition the Collector within one month after such publication: and the Collector with the aid of the assessors shall proceed to consider any such objection, and may alter or amend the Table of Rates prepared by him

Collector to deal with objections

140. If no objections shall be made within one month, or after such objections as may be made shall have been disposed of, the Collector shall submit the Table of Rates, together with his proceedings, and any petitions of objection which may have been presented, to the Commissioner of the Division, or through the Commissioner of the Division to the Board of Revenue for approval. The Lieutenant-Governor may, from time to time, by an order which shall be published in the *Calcutta Gazette*, direct what cases shall be finally submitted to the Board of Revenue or to the Commissioner.

Table to be submitted to superior Revenue authorities.

141. The Board of Revenue or the Commissioner, as the case may be, shall have full power to revise, amend, or alter in any manner which appears proper, the Table of Rates so submitted, and may allow in whole or in part any objection forwarded therewith or subsequently made, or may return for further enquiry. If the Lieutenant-Governor shall have directed that a case shall be finally submitted to the Commissioner, the Board of Revenue may nevertheless call for the proceedings, and may hear, but shall not be bound to hear, any person affected thereby, and may pass such orders as shall appear proper.

Proceedings of such authorities thereupon.

142. When a Table of Rates has been finally sanctioned by the Board or the Commissioner, it shall be submitted to the Lieutenant-Governor, who may direct, if he thinks fit, that such Table shall be published in the *Calcutta Gazette* with a specification of the local area to which it applies.

Publication of Table after final sanction.

143. Notwithstanding anything contained in Section 23, such publication shall be conclusive evidence in any Civil Court on the following matters in any suit brought under this Act:—

Consequences of such publication.

(1) that the proceedings for the preparation of the Table have been duly conducted in accordance with this Act:

(2) that the rates shown in such Table for each class of land are the rates ordinarily payable, within the meaning of the first ground of Section 23, by ryots having a right of occupancy within the local area to which the Table applies:

(3) that the gross produce of the land, and the average value thereof, within the meaning of Clause (*c*) of Section 24, are in accordance with the gross produce and value specified in the said Table.

Provided that in any suit brought as above, it shall be competent to any such ryot to plead that he is entitled by custom or contract or special equitable considerations to hold at lower or more favourable rates.

Proviso.

144. A Table of Rate published as aforesaid shall have effect for a period of ten years from the date of such publication, and thereafter until a fresh Table for the said area shall be published in a similar manner: and no ryot having a right of occupancy, whose rent may have been enhanced in accordance with the rates shown in the said Table as the rates equitably payable, shall be liable to pay any further enhancement on the first, third, or fourth of the grounds specified in Section 23, until the publication of a fresh Table of Rates as aforesaid, or until a period of ten years has elapsed since his rent was so enhanced.

Table to be in force for ten years.

145. Subject to the provisions of Section 130, any landlord may enforce the Table of rates against any ryot having a right of occupancy by suit in the Civil Court, and any number of ryots not exceeding ten may be made co-defendants in any such suit.

Table of Rates may be enforced by suit.

Preparation of Price Lists.

146. (*a*) The Collector of every district shall prepare annual lists of the prices, at harvest time, of the staple crops mentioned in Clause (*e*) of Section 24. Such price lists shall be prepared in accordance with such general directions as may from time to time be prescribed by the Board of Revenue, and shall, when prepared, be submitted to the said Board for approval or revision.

Collectors to prepare annual price lists of staple crops under general directions of Board of Revenue to submit such price lists to Board for approval or revision

(*b*) Such price lists, for all districts and areas mentioned in the said Clause (*c*) of Section 24 shall, when approved or revised by the Board of Revenue, be published annually in the *Calcutta Gazette* under the signature of one of the Secretaries to the said Board. Any such price list so published shall be relevant in any proceedings under this Chapter, and shall be *primâ facie* evidence of the price of such staple crops during the year and in the district or area for which it has been published as aforesaid

Price lists, when approved or revised by Board, to be published in *Calcutta Gazette* and to be *primâ facie* evidence of prices of staple crops

Proceedings to Enchance the Rent payable in Money by Tenure-holders and Undertenure-holders.

147. In the following cases, that is to say—

Landlord desiring to enhance rent of tenure or undertenure to proceed in Civil Court.

(*a*) in the case of a proprietor claiming to enhance the rent of a tenure-holder whose interest is immediately subordinate to that of such proprietor;

(*b*) in the case of a tenure-holder claiming to enhance the rent of an undertenure-holder whose interest is immediately subordinate to that of such tenure-holder;

(*c*) in the case of a superior undertenure-holder claiming to enhance the rent of an undertenure-holder whose interest is immediately subordinate to that of such superior undertenure-holder;

(*d*) in the case of a landlord claiming under the provisions of Section 18 to enhance the rent of a ryot entitled to hold land at fixed rates;

(*e*) in the case of a landlord claiming under the provisions of Section 33 to enhance the rent of such land as is specified in Section 32;

such proprietor or tenure-holder or superior undertenure-holder or landlord shall present a plaint to the Civil Court or such officer as it appoints in this behalf. Such plaint shall, in order to affect the rent of the following year, be presented (*a*) in districts or parts of districts in which the Fusli or Umli year prevails, in or before the month of Baisakh; or (*b*) in districts or parts of districts in which the Bengali year prevails, in or before the month of Aughan. The provisions of Section 131 shall be applicable to every such plaint so presented to a Civil Court.

Plaint when to be presented in order to affect rent of following year.

CHAPTER XVI.—OF THE RECOVERY OF ARREARS OF RENT IN CERTAIN CASES BY SUMMARY SALE WITHOUT DECREE.

148. Subject to the provisions of Section 62, and to the other provisions of this Chapter, proprietors of revenue-paying estates are entitled to apply in the manner hereinafter provided, for periodical sales of tenures of the following kinds, namely—

Proprietors entitled to apply for summary sale of certain tenures.

(*a*) *patni* tenures;

(*b*) tenures in which the right of selling for an arrear of rent has been expressly reserved by stipulation in the engagements interchanged on the creation of such tenures;

(*c*) permanent tenures of which the annual rent is not less than fifty rupees.

The exercise of this power is not confined to cases in which the stipulation for sale may have been unrestricted in regard to time, but applies equally to tenures held under engagements stipulating merely for a sale at the end of the year.

149. It shall be lawful for the Lieutenant-Governor, if he shall think fit, to declare that the provisions of this Chapter shall apply to the occupancy holdings of which the rent is payable directly to any landlord specified in such declaration. Such declaration may be made on the recommendation of the Board of Revenue, if the Board shall be satisfied that such landlord maintains a proper system of zemindary accounts, and of the registration of occupancy holdings, and that the receipts and statements of account specified in Section 49 are duly and regularly given by such landlord. So long as such declaration is in force and no longer, the provisions of this Chapter relating to the summary sale of tenures shall apply, so far as they are relevant, to the sales of occupancy holdings of which the rent is payable directly to such landlord. The Lieutenant-Governor may at any time cancel or withdraw such declaration.

Summary sale of occupancy holdings in certain cases.

150. (*a*) On the first day of Baisakh, that is, at the commencement of the following year from that of which the rent is due, any such proprietor as is mentioned in Section 148 may present a petition to the Collector containing a specification of any balances that may be due to him on account of the expired year from all or any holders of tenures of the nature described in Section 148:

First sale may be applied for on first Baisakh.

Provided that if the first of Baisakh fall on a Sunday or holiday, the petition may be presented on the first day following upon which the Collector's office is open: and also that the petition may be presented on any day after the first of the month, with the leave of the Collector, and on reasons to the Collector's satisfaction being assigned for the delay:

Provided also that if the rent of the tenure be payable according to the instalments specified in Clause (*b*) of Section 47, the petition may be presented on any day after the first day of Cheit.

(*b*) Such specification of the balances due shall then be stuck up in some conspicuous part of the Collector's kachahri, with a notice that, if the amounts claimed be not paid before the first Jeyt following, the tenures of the defaulters will on that day be sold by public sale in liquidation. If the first of Jeyt fall on a Sunday or holiday, the next subsequent day not a holiday shall be selected instead.

Specification of balances due to be stuck up at Collector's kachahri, with notice of sale in default of payment.

(*c*) A similar notice shall be stuck up at the sadr kachahri of the proprietor himself, and a copy or extract of such part of the notice as applies to the individual case shall be by him sent to be similarly published at the kachahri at which the business of the tenure is transacted, or at the principal town or village upon the land of the tenure of the defaulter. The proprietor shall be exclusively answerable for the observance of the forms above prescribed.

Similar notice to be stuck up at proprietor's sadr kachahri, and a further notice to be published on the land.

Explanation.—The notice and copy referred to in this clause may be stuck up and published at any time after the date on which the petition might be presented under Clause (*a*), whether the notice referred to in Clause (*b*) shall have been stuck up in the Collector's kachahri or not.

(*d*) The copy or extract of such part of the notice as applies to the individual case shall be served by a single peon deputed by the proprietor, who shall bring back the receipt of the defaulter or of his manager for the

Service and attestation of service of notice directed to be published on the land.

same, or, in the event of inability to procure this, the signatures of three substantial persons residing in the neighbourhood, in attestation of the notice having been brought and published on the spot.

If the people of the village object or refuse to sign their names in attestation, the peon shall go to the kachahri of the nearest Munsif, or if there is no Munsif, to the nearest thana, and there make voluntary oath of the same having been duly published a certificate to which effect shall be signed and sealed by the said officers and delivered to the peon.

Explanation.—Service upon the defaulter personally of the copy or extract of such part of the notice as applies to the individual case is not a sufficient substitute for publication at the kachahri or at the principal town or village upon the land of the tenure.

(*c*) If it shall appear from the tenor of the receipt or attestation in question that the notice has been published at any time previous to the fifteenth of the month of Baisakh, it shall be a sufficient warrant for the sale to proceed upon the day appointed.

Second or mid year sale may be applied for on first Kartik

151. On the first day of Kartik in the middle of the year the proprietor shall be at liberty to present a similar petition to the Collector with a statement of any balances that may be due on account of the rent of the current year up to the end of the month of Asin, and to cause similar publication to be made of a sale of the tenures of defaulters to take place on the first of Aughan, unless the whole of the advertised balance shall be paid before the date in question, or so much of it as shall reduce the arrear, including any intermediate demand for the month of Kartik, to less than one-fourth or a four-anna proportion of the total demand of the proprietor according to the kistbandi, calculated from the commencement of the year to the last day of Kartik.

Sale to take place if arrear to date equal one-fourth or more of the annual rent.

The provisos appended to Clause (*a*) of Section 1 0 shall be applicable, *mutatis mutandis*, to petitions presented under this Section.

Rules regarding dates how to be interpreted.

152. The dates prescribed in Sections 150 and 151 shall be taken to apply to districts or parts of districts in which the Bengali year prevails. For districts or parts of districts in which the Fasli or Umli year prevails, the first day of Baisakh shall be taken to be equivalent to the first day of the first month of the year, and the first day of Kartik shall be taken to be equivalent to the first day of the seventh month of the year.

Sale not to be stayed unless arrear claimed be lodged.

153. (*a*) If the balance claimed by the proprietor on account of the rent of the tenure together with interest and all charges incurred in bringing the tenure to sale remains unpaid at sunset of the day next preceding the day fixed for the sale of such tenure as hereinbefore provided, the sale shall be made without reserve, in the manner provided in Sections 158 and 159. Save as provided in Section 154 and in Section 156, such sale shall not be stayed or postponed on any account unless the amount of the demand, together with interest and the charges incurred, has been paid or lodged before sunset of the day next preceding the day of sale as aforesaid.

Explanation.—The balance claimed by the proprietor may be paid to such proprietor or to his agent having authority to receive it, or may, subject to the rules for the receipt of money in Government Treasuries, be lodged in the Treasury of the Collector having jurisdiction under the provisions of Section 164.

But suit will lie for its reversal

(*b*) It shall, however, be competent to any party desirous of contesting the right of the proprietor to make the sale, whether on the ground of there having been no balance due or on any other ground, to sue such proprietor for the reversal of the same, and upon establishing a sufficient plea to obtain a decree with full costs and damages.

Purchaser to be made party to such suit.

(*c*) The purchaser shall be made a party to any such suit, and, upon making a decree for reversal of the sale, the Court shall be careful to indemnify him against all loss at the charge of the proprietor or person at whose instance the sale may have been made.

Illustrations

In the following cases a sufficient plea is established :—

(*a*)—*A*, a *patnidar*, sues for the reversal of the sale of his *patni* tenure on the allegation that no notice was stuck up in a conspicuous part of the Collector's kachahri, as required by Clause (*b*) of Section 150, and this allegation is found to be true.

(*b*)—*A*, *B*, and *C*, joint owners of a *patni* tenure, sue for the reversal of the sale of such *patni* tenure on the allegation that no copy or extract of the notice was published at the kachahri or at the principal town or village upon the land as required by Clause (*c*) of Section 150. The allegation is found to be strictly true, although it appears that a copy of the notice was served on *A* and *B* personally.

In the following case a sufficient plea is not established :—

(*c*) *A*, a *patnidar*, sues for the reversal of the sale of his *patni* tenure on the ground that no copy or extract of the notice was published at the kachahri or at the principal town or village upon the land, as required by Clause (*c*) of Section 150. It is found that the copy or extract of the notice was published in the manner required by this clause; but that the peon did not bring back the receipt of the defaulter, or of his manager, or of three substantial persons residing in the neighbourhood as required by Clause (*d*) of the same Section, nor did he, as required by the same rule, make a voluntary oath before the nearest Munsif, or at the nearest thana, that the copy or extract had been duly published.

Defaulter may apply for summary investigation before sale.

154. (*a*) In any case in which a tenure-holder contests the proprietor's demand of an arrear as specified in the notice advertised, such tenure-holder shall be competent to apply for a summary investigation at any time within the period of notice. The proprietor shall then be called upon to furnish his kabuliyat and other proofs at the shortest convenient notice in order that the award may, if possible, be made before the day appointed for sale.

But sale not to be stayed, unless amount of rent claimed be deposited.

(*b*) Such award, if so made, will of course regulate the ulterior process; but if the case be still pending, the lot shall be called up in its turn notwithstanding the suit; and, if the proprietor or his agent in attendance insists on the demand, the sale shall be made on his responsibility, nor shall it be stayed or the summary suit be allowed to proceed, unless the amount claimed or its equivalent in Government securities be then lodged or has been previously

lodged, by the tenure-holder contesting the demand; and if such deposit be not made, the alleged defaulter shall have no remedy but by a regular action for damages, and for a reversal of the sale.

Omission to ask for investigation not to preclude action.

(*c*) The omission to apply for a summary investigation under this Section shall not preclude the tenure-holder from bringing such regular action.

If decision against proprietor be reversed on appeal, demand may be included in next half-yearly balance.

155. If, on such summary investigation, the Collector decide against the proprietor, and such decision be afterwards reversed on appeal to the superior Revenue authorities, the proprietor shall be at liberty to include, in the specification of balances for the half-year next following such reversal, the amount of the demand so contested under Section 154.

Undertenure holders enabled to protect themselves from avoidance of their undertenures upon sale of the tenure.

156. In order to give undertenure-holders of the first degree an opportunity of protecting themselves against damage by the avoidance of their undertenures upon the sale of the tenure, the following rules have been enacted:—

by paying in the amount for which the tenure is about to be sold,

(1) Any one or more of such undertenure-holders may, when the tenure is advertised for sale, pay into the Collectorate Treasury or to the officer conducting the sale the amount for the realization of which the tenure is about to be sold; and, on such payment being made, the sale shall be stayed.

or by lodging money antecedently to meet arrears

(2) Any one or more of such undertenure-holders may lodge money antecedently for the purpose of eventually answering any demand that may remain due on the day fixed for the sale of the tenure; and, should the amount lodged be sufficient, the sale shall not proceed, but after making good to the proprietor the amount of his demand, any excess shall be paid back to the person who lodged it.

Procedure if amount lodged be rent due from under-tenant.

157. (*a*) In any case in which an undertenure-holder has paid money under Section 156 in order to protect his undertenure, if the amount so lodged be wholly or partly rent due by such undertenure-holder to the holder of the tenure about to be sold, the same shall be stated at the time of making the deposit, and the amount or so much thereof as may be necessary shall be carried to the account of the tenant lodging it in satisfaction of any claim of rent that may at the time be pending, or be thereafter brought forward against him by the proprietor of the advertised tenure on account of the year or months for which the notice of sale may have been published.

Procedure if amount lodged be an advance from private funds.

(*b*) If the person making such a deposit in order to stay the sale of the tenure shall have already paid the whole or part of the rent due from himself, so that the amount lodged is wholly or partly an advance from private funds and not a disbursement on account of the said rent, such deposit or the balance which remains after satisfying any claims to rent under Clause (*a*) shall not be carried to credit in, or set against, future demands for rent, but shall be considered as a loan made to the holder of the tenure preserved from sale by such means, and the tenure so preserved shall be the security to the person making the advance, who shall be considered to have a lien thereupon in the same manner as if the loan had been a first mortgage upon the tenure; and he shall be entitled, on applying for the same to obtain immediate possession of such tenure in order to recover the amount so advanced from any profits belonging thereto.

Explanation.—When an advance is made under this Clause, any pre-existing first mortgage on the tenure shall be held to have the effect of a second mortgage, and so on in order.

Defaulting tenure-holder must pay total sum advanced with interest, if he wants to recover his tenure.

(*c*) If the defaulting tenure-holder shall desire to recover his tenure from the hands of the person who, by making the advance, has acquired such an interest therein and entered on possession in consequence, he shall not be entitled to do so, except upon repayment of the entire sum advanced with interest at the rate of twelve per centum per annum up to the date of possession having been given as above, or upon exhibiting proof in a regular suit to be instituted for the purpose, that the full amount so advanced with interest has been realized from the usufruct of the tenure.

Lots to be sold in order. Proprietor's agent to be present with account and receipt for notice.

158. (*a*) At the time of the sale the notice previously stuck up in the kachahri shall be taken down, and the lots shall be called up successively in the order in which they may be found in that notice. A person shall attend on the part of the proprietor with a particular statement of the payments made up to the day of sale on account of the balance of each advertised lot, together with the receipt or certificate mentioned in Clause (*d*) of Section 150. No lot shall be put up to sale until the statement produced shall have been inspected, and the existence of a balance for the year ascertained therefrom, nor until the receipt for the notice shall have been read, the observance of which forms shall be recorded in a separate proceeding to be held upon each lot sold.

Kistbandi to be produced at second or mid-year sale.

(*b*) If the sale be of the description provided for in Section 151, the kistbandi of the defaulter shall likewise be produced in order that it may be seen that the balance remaining unpaid exceeds a four-anna proportion of the demand up to the date of sale; nor shall the sale take place unless this be ascertained.

Proprietor exclusively responsible for correctness of papers, &c.

(*c*) The proprietor shall be exclusively responsible for the correctness and authenticity of the papers to be thus exhibited, nor shall the Collector or other officer making the sale be answerable in any respect except for its fairness and publicity, and for the observance of the rules prescribed for his guidance in this Chapter.

Sale to be held by Collector in public kachahri: procedure to be observed at sale.

159. (*a*) The sale shall be conducted in public by the Collector of Land Revenue [having jurisdiction as provided in Section 161]. The tenure shall be sold to the highest bidder, and every one

not the actual defaulter shall be free to bid, not excepting the person in satisfaction of whose demand the sale may be made, nor the under-tenants of the defaulter. Fifteen per cent. of the purchase-money shall be paid as soon as the lot is knocked down, and the officer conducting the sale shall be competent to refuse to accept a bid or to knock down a lot to any bidder, unless he has assurance to his satisfaction that the amount required to be deposited is in hand for the purpose, or will be produced within two hours.

Re-sale if 15 per cent. not deposited, &c., or if remainder of purchase-money not paid. Deposit forfeited in latter case

(*b*) If the fifteen per cent. be not paid, or an equivalent amount in Government securities be not lodged within two hours of the sale, the lot shall be re sold on the same day; and if the remainder of the purchase-money be not paid by noon of the eighth day, notice shall be given of re-sale on the following pay, that, is, on the ninth from the first sale, by proclaiming the same by beat of drum through the bazar of the sadr station of the district, after which the lot shall be re-sold at the appointed time at the risk of the first purchaser, who shall forfeit the advance of fifteen per centum already made, and be further answerable for any sum in which the proceeds of the second sale may fall short of the antecedent one. Such deficiency shall be levied by the process for the execution of decrees of the Civil Courts.

Forfeited deposit how applied.

(*c*). The forfeited deposit of fifteen per centum shall be applied to defray the expenses of the sale, and the surplus shall be credited to Government.

Tenure declared to be sold free of incumbrances created by act of defaulter

160. (*a*) Every tenure that may be disposed of at a public sale under the rules contained in Sections 148 to 159 inclusive for arrears of rent due on account of the same, is hereby declared to be sold free of all incumbrances that may have accrued upon it by the act of the defaulting proprietor, his representatives, or assignees, unless the right of making such incumbrances was expressly vested in the holder by a stipulation to that effect in the written engagements under which the said tenure was held.

No transfer, mortgage, &c., valid against proprietor unless he have consented thereto

(*b*) No transfer by sale, gift, or otherwise, no mortgage or other limited assignment, shall be permitted to bar the indefeasible right of the proprietor to hold the tenure of his creation answerable, in the state which he created it, for the rent, which is in fact his reserved property in the tenure, except such transfer or assignment has been made with a condition to that effect under express authority obtained from such proprietor.

All leases granted by defaulter are cancelld by sale.

(*c*) In like manner, upon the sale of a tenure for arrears, all leases originating with the former tenure-holder, if creative of a middle interest between the resident cultivators and such tenure-holder, must be considered to be cancelled, except the authority to grant them have been specially transferred. The possessors of such interests must consequently lose the right to hold possession of the land and to collect the rents of the ryots, this having been enjoyed merely in consequence of the defaulter's assignment of a certain portion of his own interest, the whole of which was liable for the rent:

Exception in favour of *bond fide* engagements with ryots.

provided that nothing contained in this section shall be construed to entitle the purchaser of a tenure to eject any settled ryot, or to cancel *bond fide* engagements made with such tenants by the late incumbent or his representative, except it be proved in a regular suit to be brought by such purchaser for the adjustment of his rent, that a higher rate would have been demandable at the time such engagements were contracted by his predecessor. Subject to these provisions any such purchaser shall be entitled to proceed under the provisions of this Act to enhance the rent of the ryots holding land in the tenure purchased by him, but no ryot shall be liable to ejectment otherwise than as provided in this Act.

Certificate to be given to purchaser on payment of full amount of purchase-money.

161. (*a*) The purchaser, as soon as he has paid the full amount of the purchase-money, shall receive from the officer conducting the sale a certificate of such payment.

(*b*) Such purchaser shall then proceed with such certificate to procure a transfer of the tenure to his name in the kachahri of the proprietor, and upon furnishing security, if required, to the extent of half the annual rent, he shall receive the usual order for possession, together with a notice to the ryots and others to attend and pay their rents henceforward to him

Zemindar bound to put him in possession

(*c*) The proprietor shall also be bound to furnish access to any papers connected with the tenure purchased that may be forthcoming in his kachahri; and should he in any manner delay the transfer in his office or refuse to give the orders for possession, notwithstanding that good and substantial security shall have been furnished or tendered on requisition, the new purchaser shall be entitled to apply direct to the Collector, and he shall receive an order for possession, and shall be put in possession of the land by an officer deputed by the Collector for that purpose in the same manner as possession is obtained under a decree of court: provided, however, that if the delay be on account of the proprietor contesting the sufficiency of the security tendered, the rule contained in Clause (*c*) of Section 45 shall be observed.

Purchaser's remedy, if zemindar refuse or delay to put him in possession.

Former tenure holder must furnish jummabandi.

(*d*) The former tenure-holder shall also be bound to furnish the new purchaser with a jummabandi of the rents payable by the undertenure-holders or ryots: and if he fail to furnish such jummabandi when called upon to do so, the purchaser may institute a suit under this Act to recover damages from such former tenure-holder.

Procedure in case of opposition to purchaser by defaulter or persons claiming under him.

162. (*a*) When the new purchaser proceeds to take possession of the lands of his purchase, if the late incumbent himself or the holders of under-tenures or assignments derived from such late incumbent, and intermediate between him and the actual cultivators, attempt to offer opposition or to interfere with the collections of

such new purchaser from the lands composing his purchase, the latter shall be at liberty to apply immediately to the Collector for the aid of the public officers in obtaining possession of his just rights.

Collector to issue proclamation.

(*b*) A proclamation shall then issue under the seal and signature of the Collector, declaring that the new incumbent having, by purchase at a sale for arrears of rent due to the proprietor, acquired the entire rights and privileges attaching to the tenure of the late tenure-holder in the state in which it was originally derived by him from the proprietor, he alone will be recognized as entitled to collect the rents from the ryots and others, and no payments made to any other individual will on any account be credited to such ryots or other tenants in any suit for rent or on any other occasion whatever when the same may be pleaded.

Procedure in case of continued opposition by defaulter or his undertenants.

(*c*) If the late incumbent or his late tenants continue to oppose the entry of the new purchaser, notwithstanding the issuing of such a proclamation, or if there is reason to apprehend a breach of the peace on the part of any one, the aid of the police-officers shall be given to the new purchaser on his presenting a written application for the same; and in the event of any affray or breach of the peace occurring, the entire responsibility shall rest with the party opposing the lawful attempt of the purchaser to assume his rights.

Rules for disposal of the sale-proceeds.

163. The following rules shall be observed in disposing of the proceeds of the sale, that is to say—

One per cent to be credited to Government.

(1) One per centum shall first be deducted from the net proceeds realized and shall be carried to the account of government, for the purpose of meeting the expense of any extra establishments which it may be necessary to maintain for carrying into effect the provisions contained in Sections 148 to 162 inclusive.

Zemindar's claim for rent to be next satisfied: proviso

(2) The balance on account of which the sale may have been made shall next be made good in full (with interest and all charges incurred in bringing the tenure to sale) to the proprietor or other person to whom the same may be due: provided, however, that no former balances beyond those of the current year (or of that immediately expired, if the sale be at the commencement of the following year), except such balances as are referred to in Section 155, shall be included in the demand to be thus satisfied. Such antecedent balances other than those referred to in Section 155, if the proprietor have omitted to recover them by summary sale at the time, shall be regarded as personal debts of the individual tenure-holder, and can be recovered only in the same manner as other debts by a regular suit in Court.

Balance to be sent to Government Treasury to meet claims of persons undamaged by sale

(3) Any excess that may remain after satisfying the demand of the proprietor shall be sent by the officer conducting the sale to the Government Treasury, to be held in deposit to answer the claims of the undertenure-holders of the first decree, or of others who by assignment of the defaulter may be at the time in possession of a valuable interest in the land composing the tenure sold, or any part of it.

Undertenure-holders free to sue for price of their interest or compensation.

(4) It shall be competent to any one conceiving himself to possess such an interest as is mentioned in Clause 3, to bring forward his claim to the price he may have paid for the same, or for a just compensation for the loss sustained by him in consequence of the sale, by instituting a regular suit.

Award of Court if plaintiffs' claim found equitable

(5) If the Court on investigation considers the plaintiff's claim to be an equitable one, the Court shall award to the claimant either the price he may have originally paid, or the value of the interest at the time of sale, or any other amount that may be deemed just and equitable under all the circumstances. If there be more claimants than one, payment shall not be made from the deposit until the whole of the claims be settled; and in case the value assessed upon the whole should exceed the amount in deposit, such amount shall be divided proportionately, and the remainder stand as a personal debt against the defaulter, to be realized from him by the usual process for the execution of decrees.

Suit not to lie if undertenure-holder be himself in arrear at time of sale.

(6) No undertenure-holder of the first degree or other possessor of an assigned interest upon the land of the tenure sold, who may be holding under a stipulation for the payment of an annual amount in the way of rent, shall be entitled to recover compensation for the loss of such undertenure or assignment upon its becoming cancelled by sale of the tenure, except after exhibiting proof that the whole amount of the rent demandable from himself has been paid or lodged for the purpose before the sale.

Defaulter entitled to sale-proceeds if no claims, or after claims have been satisfied.

(7) If no claims upon the balance of the sale-proceeds are brought forward by any undertenants or assignees within the period of two months from the date of sale, or if the amount claimed by those who may have sued do not equal the entire deposit, the defaulter whose tenure may have been sold shall be at liberty to petition the Court for the amount so held in deposit or for the excess thereof, as the case may be, and he shall receive a certificate under the seal of the Court of there being no claims to afford ground of detention for the whole or any part of the deposit, and, upon exhibiting such certificate to the Collector, the amount set free thereby shall be paid to his receipt. In the same manner, upon executing a decree passed in favour of any undertenants or assignees, they shall receive certificates under the seal of the Court, declaring the amount adjudged to them out of the deposit, and upon exhibiting these certificates, the amount shall be paid severally to their receipts by the Collector.

Substitution of Government securities for cash in deposit.

(8) It shall be competent to any party interested in a deposit to withdraw the whole or any part thereof, on substituting Government securities bearing interest in lieu of the money so held in deposit. Such securities shall be taken

at the rate of discount or premium of the day, as shown by the Government Gazette last received.

Rules for the exercise of jurisdiction in summary sales by the Revenue authorities.

164. The exercise of jurisdiction by the Revenue authorities under Sections 148 to 163 inclusive shall be regulated by the following rules:—

(1) Unless the Board of Revenue shall otherwise direct, the Collector of the district upon the revenue-roll of which the estate to which the tenure is subordinate is borne, shall conduct the sale and otherwise exercise jurisdiction.

(2) It shall be lawful for the Board of Revenue to direct that, in the case of any particular tenure specified in such order, jurisdiction shall be exercised by some other Collector than the Collector who would exercise jurisdiction under Clause (1): and such other Collector shall thereupon conduct the sale and otherwise exercise jurisdiction in respect of such tenure.

(3) Subject to such rules as may be made in that behalf by the Board of Revenue, a Deputy Collector may be authorized by a Collector to conduct sales or otherwise exercise jurisdiction under this Chapter.

Chapter XVII.—Of certain Special Rules of Procedure applicable to suits between Landlords and their Tenants or Agents.

Code of Civil Procedure to apply to suits between landlords and their tenants or agents.

165. Save as in this Act is otherwise provided, *The Code of Civil Procedure* shall apply to all suits brought for causes of action arising between landlords and their tenants or agents; and all proceedings in such suits before and after decree shall be governed by the provisions of the said Code. A special register of such suits shall be kept by every Civil Court in the manner prescribed by Section 58 of the said Code.

Special register of such suits to be kept in every Court.

Suits between landlords and their tenants or agents where to be instituted.

166. The cause of action in all such suits shall be deemed to have arisen within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to entertain a suit for the recovery of the land in respect of which the relation of landlord and tenant or the agency exists between the parties.

Sarbarakars and tehsildars of khas estates may sue and be sued in their own names.

167. All suits arising out of the relation of landlord and tenant, which may be brought by or against landlords, and all such suits against agents as re-mentioned in Section 183 may be brought (*a*) by or against managers appointed under "The Court of Wards' Act, 1879;" (*b*) by or against managers appointed by any Civil Court; and (*c*) by or against sarbarakars or tehsildars of estates held under the immediate management of the Revenue authorities, whether such estates are the property of private persons or of the Secretary of State for India in Council. All such suits shall be conducted or defended in the name of the Secretary of State for India in Council, or in the names of private persons to whom such estates belong.

Naibs or gomashtahs, thereto specially empowered, to be authorised agents in cases arising out of the relations of landlord and tenant.

168. (*a*) Every naib or gomashtah thereto specially empowered by a written authority under the hand of his employer, shall, for the purposes of all such suits as are mentioned in Section 165, be deemed to be the recognized agent of such employer within the meaning of Sections 36, 37, and 38 of *The Code of Civil Procedure*, notwithstanding that such employer may be within the local limits of the jurisdiction of the Court in which any appearance, application, or act is made or done by such naib or gomashtah. Any such suit shall, nevertheless, be instituted and conducted in the name and on behalf of such employer.

Notice may be served upon, or money or fee tendered to, naib or gomashtah instead of landlord.

(*b*) Every notice which may under any of the provisions of this Act be served upon, and every sum of money or fee which may under any of the provisions of this Act be tendered to, a landlord, may be served upon, or tendered to, any naib or gomashtah of such landlord empowered in the manner and for the purpose mentioned in Clause (*a*); and such service or tender shall be as effectual as service upon, or tender to, such landlord himself.

Suit by landlord or tenant to determine conditions of tenancy.

169. Every landlord shall be entitled to maintain a suit against any tenure-holder or ryot the rent of whose tenure or holding is payable to such landlord, and, subject to the provisions of Section 26, every tenure-holder or ryot shall be entitled to maintain a suit against his landlord for the determination of all or any of the following matters, that is to say—

(1) In the case of a tenure-holder—

(*a*) the quantity of land held by such tenure-holder, when the tenure consists of specific lands:

(*b*) the amount of annual rent payable by such tenure-holder.

(*c*) the class to which such tenure-holder belongs—that is, whether he is entitled to hold at a fixed rent, or whether his rent is liable to enhancement under Section 7, or whether he is entitled to the special rate of profit mentioned in Section 10.

(2) In the case of a ryot—

(*a*) the quantity of land held by such ryot:

(*b*) the amount of annual rent payable for such land:

(*c*) the class to which such ryot belongs—that is, whether he is a ryot entitled to hold at fixed rates, or is a ryot having a right of occupancy, or is a ryot not having a right of occupancy.

If, in any suit instituted as above, it shall be disputed whether one of the parties to the suit is a tenure-holder or a ryot, the Court shall proceed to determine this question, and in so doing the Court shall have regard to the terms of the original demise, and to the mode in which the lands are held at the time of the institution of the suit. If the Court shall be of opinion that the extent of the land demised was such that it cannot reasonably be presumed that it was intended to be held as a ryot's holding, and shall further find that the person whose status is in dispute has sublet more than one-half of the total area demised to him, the Court may adjudge him to be a tenure-holder and not a ryot.

The plaint in any suit under this Section shall state the allegation of the plaintiff as to each of such matters respectively. No such suit shall be dismissed merely because the plaintiff fails to prove exactly the allegations made in his plaint.

Claim for ejectment or cancelment of lease how to be put forward.

170. A landlord desiring to eject a ryot or to cancel a lease on account of non-payment of arrears of rent, may sue for such ejectment or cancelment, and for recovery of the arrears in the same suit, or he may sue for such ejectment or cancelment, producing an unexecuted decree for arrears of rent as evidence of the existence of such arrears. In all such suits the decree shall specify the amount of the arrears, and if such amount, together with interest and the costs of the suit, be paid into Court within fifteen days from the date of the decree, execution shall be stayed. If the Court is closed on the fifteenth day, such amount may be paid in on the day upon which the Court re-opens.

Stay of ejectment on satisfaction of decree within fifteen days.

Explanation 1.—The judgment-debtor is entitled to the benefit of this fifteen day's rule, even though the lease contains a stipulation that it shall be void upon one or more instalments of rent falling into arrear, or upon the breach of any other condition as to payment of rent therein contained.

Explanation 2.—If the original decree is altered or amended on appeal or review, the fifteen days shall be computed from the date of the judgment on appeal or review. If on appeal or review the original decree be not altered or amended, the fifteen days shall be computed from the date of such original decree.

Process of execution may be issued against person or property but not against both.

171. Subject to the provisions of Section 56, process of execution in any such suit as is mentioned in Section 165 may be issued against either the person or property of the judgment-debtor, but such process shall not be issued simultaneously against both his person and property. Process of execution against the property may be issued against either the movable or immovable property, or against both.

Court to issue immediate execution in certain cases of ejectment, &c.

172. When in a suit brought by a landlord to eject a ryot liable to ejectment under the provisions of this Act, or to eject a farmer or other tenant holding only for a limited period after the determination of his lease or tenancy, or an agent after the determination of his agency, or to enforce any attachment or ejectment expressly authorized by any Regulation or Act, the Court passes a decree in favour of the plaintiff, no application for execution in the form provided in Section 235 of *The Code of Civil Procedure* shall be necessary, but such Court shall forthwith, upon the plaintiff depositing in Court the necessary expenses, make an order for delivery of possession in execution of the decree: provided, however, that in cases to which Section 107 is applicable, no such order shall be made until after the expiration of fifteen days from the date of the decree.

In such cases execution not to be stayed pending appeal.

173. It shall not be lawful for the Court to entertain an application for stay of execution of the order mentioned in Section 172 pending an appeal, and no person, who shall have been evicted under any such order, shall be restored to possession so long as the decree under which such order was issued shall remain unreversed.

No appeal from any decree of a District Judge or any Additional Judge for money below Rs. 100, unless right to enhance rent or title to land be determined by judgment.

174 Nothing contained in this Act shall be deemed to alter the law as established by Act X of 1859 passed by the Governor-General in Council, so as to confer a right of appeal in any suit tried and decided under the provisions of *The Code of Civil Procedure* or of Chapter XVIII of this Act by a District Judge or Additional Judge originally or in appeal, if the amount sued for or the value of the property claimed does not exceed one hundred rupees, and if no question of right to enhance or vary the rent of a ryot or tenant, or no question relating to title to land or to some interest in land as between parties having conflicting claims thereto, has been determined by the judgment in such suit.

Illustration.

A sues *B* for the rent of certain land. *B* pleads that the rent of the land is payable to *C*, and not to *A*. *C* is not made a party to the suit, which is decreed against *B*. No question relating to a title to land or to some interest in land as between parties having conflicting claims thereto is determined by the judgment in this suit.

Review of judgment not admissible after thirty days.

175. No application for a review of a judgment or order passed in any such suit as is mentioned in Section 165 shall be received by a Civil Court other than the High Court of Judicature at Fort William in Bengal, after the expiration of thirty days from the date of such order or judgment.

Notice or summons not specially provided for, to be served under the provisions of *The Code of Civil Procedure* for service of summons on defendant.

176. Any notice or summons, which it is necessary to issue under this Act, and for the service of which no special provision is made, shall be served under the provisions contained in *The Code of Civil Procedure* for the service of summons on a defendant.

Measurement of Lands.

Procedure if opposition made to measurement of land, or if tenants refuse to attend and point out land.

177. If any person desiring to measure any land which he has a right to measure in accordance with Section 67, is opposed in making such measurement by the occupant of the land; or if any tenure-holder or ryot having received notice of the intended measurement of land held by him, which is liable to such measurement, refuses to attend and point out such land, the person claiming the right to measure such land may apply to establish his right to measure such land in the Court which would have jurisdiction in case such suit had been brought for the recovery of such land, and such Court shall hear and determine the right to make such measurement, and if the case shall so

require, shall make an order enjoining or excusing the attendance of any such tenure-holder or ryot. If any tenure-holder or ryot, after the issue of an order enjoining his attendance, neglects to attend and to point out the land, it shall not be competent to him to contest the correctness of the measurement made, or any of the proceedings held, in his absence.

Procedure to effect measurement of land, when it cannot be ascertained who are the persons liable to pay rent.

178. If the proprietor of an estate or owner of a tenure, or other person entitled to receive the rents of an estate or tenure, is unable to measure the lands comprised in such estate or tenure, or any part thereof, by reason that he cannot ascertain who are the persons liable to pay rent in respect of the lands, or any part of the lands comprised therein, such proprietor or other person may apply to the Court which would have had jurisdiction in case a suit had been brought for the recovery of such lands, and such Court thereupon, and on the necessary costs being deposited therein by the applicant, shall order such lands to be measured, and shall cause a copy of such order to be transmitted to the Collector in whose jurisdiction the lands are situate, together with the sum so deposited for costs, and the Collector shall thereupon proceed to measure such lands, and shall ascertain and record the names of the persons in occupation of the same, or, on the special application of the proprietor or other person aforesaid, but not otherwise, shall proceed to ascertain, determine, and record the tenures and under-tenures, the rates of rent payable in respect of such lands, and the persons by whom respectively the rents are payable.

Procedure if Collector cannot measure lands, or ascertain names of tenants.

179. If after due enquiry the Collector shall be unable to cause such lands to be measured, or to ascertain or record the names of the persons in occupation of the same, or if he shall (in any case in which such special application shall have been made as aforesaid) be unable to ascertain who are the persons having tenures or under-tenures in such land, or any part thereof, then, and in any such case, such Collector may declare the same to have lapsed to the party on whose application such enquiry may have been made.

Order may be revised on subsequent appearance.

180. If any person, within fifteen days after such Collector shall have recorded the name of such person as being in occupation of such land, or any part thereof, or shall have declared a tenure to have lapsed, shall appear and show good and sufficient cause for his previous non-appearance, and shall satisfy such Collector that there has been a failure of justice, such Collector may, upon such terms or conditions as may seem fit, alter or rescind such order according to the justice of the case.

Collector how to act on completing measurement.

181. The Collector shall, as soon as conveniently may be after he shall have finally completed any such measurement and record, return a copy thereof to the Court by which such measurement had been ordered, and such Court shall receive and record the same; and every decision of the Collector made in pursuance of Sections 178, 179, and 180 shall be appealable as if the same had been an order of the Court into which such copy had been returned, made upon the day on which such copy was so returned; but, save as aforesaid, every decision of such Collector made in pursuance of the provisions of the aforesaid Sections shall be final.

Procedure and powers of Collector.

182. The provisions of any Act or Acts for the time being in force in Civil Courts in Bengal, relating to the evidence of witnesses, to procuring the attendance of witnesses, and the production of documents, and to the examination, remuneration, and punishment of witnesses, shall apply to all proceedings before any Collector under the Sections aforesaid; and for such purposes, the Collector shall have all the powers and authorities in and by such Acts or any of them conferred upon the Court.

Suits against Agents.

Suits for money or accounts or papers against agents employed in collection or receipts of rents or management of land.

183. When an agent employed by a landlord in the collection or receipt of rents or the management of land neglects or refuses to deliver to such landlord any money, accounts, or papers which have come into or have been in his hands in the course of such employment, or neglects or refuses to render a proper account of his receipts and disbursements, such landlord may sue such agent in the Civil Court.

Landlord may sue for exact sum or specific accounts or papers when known

When such landlord is able to ascertain the exact sum of money or the specific accounts or papers in the hands of such agent, he shall state such sum or describe such accounts or papers in his plaint.

When exact sum or specific papers not known in consequence of agent not having rendered proper accounts, landlord may ask that Court take an account

184. When such landlord is unable to ascertain the exact sum of money, or the papers, vouchers, or other documents in the hands of the agent in consequence of such agent having neglected or refused to render proper accounts, such landlord shall set forth this fact in his plaint, and may pray that the Court take an account from such agent and make a decree for the payment of such sum of money, if any, which, upon taking such account, may be found to be due to such landlord, and for the delivery of such papers, vouchers, or other documents as may be found to be in the hands of such agent.

Summons to defendant to require him to show cause why he should not render accounts.

185. The provisions of *The Code of Civil Procedure* shall be applicable to every plaint presented under Section 183 or Section 184; but in the case of any such plaint as is described in Section 184, the summons to the defendant issued under Section 61 of the said Code shall call upon such defendant to show cause why he should not render a full and satisfactory account of all sums received and disbursed by him, and of all papers, vouchers, or other documents which may have come into his hands in the discharge of his duties as agent.

186. If such defendant fails to show cause or does not, in the opinion of the Court, show sufficient cause why he should not render such full and satisfactory account, the Court shall make an order requiring such defendant to file such account in Court, and shall fix a day on or before which such account shall be so filed. Such order may be enforced in the manner provided in Section 260 of *The Code of Civil Procedure*.

If defendant fail to show cause or do not show sufficient cause, Court shall make an order that a proper account be filed, and shall fix a date by which it shall be filed Such order how enforced

187. When such defendant files such account, the Court shall allow the plaintiff a reasonable time to examine it and file objections thereto, if he desires to make any such objections, and shall then fix a date upon which such Court shall proceed to hear such objections, if any, and to examine such account If upon such hearing it appears that the plaintiff is not entitled to any sum of money or to any papers, vouchers, or other documents in the hands of the defendant, such suit shall be dismissed. If it appears that the plaintiff is entitled to a sum of money or to any such papers, vouchers, or other documents, a decree shall be made for the payment or delivery thereof, and such sum of money, papers, vouchers, or other documents shall be specified in such decree.

Plaintiff to be allowed time to examine account filed, and object. Day to be fixed for hearing objections. Decree to be made after hearing.

Chapter XVIII.—Of the Procedure in Suits for the Recovery of Arrears of Rent, &c., and certain other Suits.

188. When the relation of landlord and tenant is admitted or proved to subsist between the parties, the procedure contained in this Chapter shall apply to the following suits, that is to say—

Procedure contained in this Chapter to be followed in certain suits, when relation of landlord and tenant is admitted or proved.

(1) to suits for the recovery of the rent of land situated outside the local limits of the ordinary Original Jurisdiction of the High Court of Judicature at Fort William in Bengal:

(2) to suits for ejectment from any such land:

(3) to suits brought to recover possession of any such land:

(4) to suits for damages on account of illegal exaction of rent or cesses, or on account of the refusal of receipts:

(5) to suits brought under Section 44 to compel the registration of successions to, or transfers of, tenures, undertenures, or occupancy holdings:

Provided that it shall be competent to the District Judge, upon the application of any party thereto, to direct that any such suit shall be tried according to the provisions of *The Code of Civil Procedure*, and upon such order being made the whole of such provisions shall be applicable to the trial of such suit.

District Judge may direct any such suit to be tried under the ordinary provisions of *The Code of Civil Procedure*.

The Plaint, &c.

189 The suit shall be instituted by presenting a plaint. Such plaint shall be presented to the Civil Court of the lowest grade competent to try such suit.

Plaint to be presented to Civil Court of lowest grade competent to try suit

If the land mentioned in Section 166 is situate within the limits of different districts or within the limits of a single district, but within the jurisdiction of different Courts, the provisions of Section 19 of *The Code of Civil Procedure* shall be applicable.

Place of suing how determined when there are different local limits of jurisdiction.

While a suit so instituted is pending, no Court shall receive or try another suit instituted for the same relief between the same parties, or parties under whom they or any of them claim, and in which the matter in issue is directly and substantially in issue in the suit so previously instituted.

While such suit is pending, no subsequent suit to be entertained for same subject-matter between same parties.

190. The plaint must contain the following particulars:—

Particulars to be contained in plaint.

(*a*) the name of the Court in which the suit is brought;

(*b*) the name, description, and place of residence of the plaintiff;

(*c*) the name, description, and place of residence of the defendant;

(*d*) a simple concise statement of the claim;

(*e*) the date when the cause of action arose;

(*f*) a demand of the relief prayed for; and

(*g*) in suits concerned with tenures, undertenures, holdings, or land, the extent, situation, designation, and boundaries of the same; or, where the plaintiff is unable to give the boundaries, in lieu thereof a description sufficient for identification.

The provisions of Section 49 of *The Code of Civil Procedure* as to the language of the plaint shall be applicable.

191. (*a*) The plaint shall be signed by the plaintiff, and in any case in which he has employed a pleader by such pleader. It shall also be verified at the foot by the plaintiff or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case; provided that if the plaintiff by reason of absence or for other good cause is unable to sign the plaint, it may be signed by any person duly authorized by him in this behalf.

Plaint to be signed and verified.

The provisions of Section 52 of *The Code of Civil Procedure* as to the contents and signature of the verification shall be applicable.

(*b*) The provisions of Sections 53, 54, 55, 56, and 57 of *The Code of Civil Procedure* as to rejecting, amending, and returning plaints shall so far as they are relevant, apply to plaints presented under Section 189. When any such plaint is admitted, the Court shall cause the particulars mentioned in Section 190 to be entered in the registor prescribed by Section 165. Such entries shall be numbered in a separate series for each year according to the order in which plaints are admitted.

Rejection, amendment, return, and admission of plaints.

Parties, &c.

Substituting, dismissing, and adding of parties.

192. The provisions of Section 27 of *The Code of Civil Procedure* as to substituting or adding a plaintiff for, or to, a plaintiff suing, and the provisions of Section 32 of the same Code as to dismissing or adding parties, shall be applicable to all suits instituted and tried under the provisions of this Chapter: provided that the Court shall not add as a party to any suit tried under the procedure contained in this Chapter a person setting up a title adverse to the plaintiff or defendant in respect of the subject-matter of the suit: but any question of title disputed between any such person and a party to the suit may be decided in such suit as between the parties thereto, if the decision of such question is necessary to the proper determination of the suit.

Person claiming adversely to the landlord or tenant, who are parties to the suit, not to be added as a party.

Illustration.

A, a proprietor, sues *B*, a ryot, for the rent of a holding, and files in court a kabuliyat alleged to have been executed for such holding by *B* in his favour. *B* denies the execution of the kabuliyat, and pleads that his holding forms part, not of *A's* estate, but of the estate of *X*, a neighbouring proprietor. *X* appears, makes a similar allegation, and desires to be made a party to the suit. The Court shall not make *X* a party to the suit, but shall confine itself to the question of the genuineness of the kabuliyat.

Proceedings preliminary to Hearing.

Issue of summons to defendant. Appearance how to be made.

193. When the plaint has been registered under Section 191, a summons may be issued to each defendant to appear and answer the claim on a day to be therein specified—

(*a*) in person, or

(*b*) by a pleader, duly instructed and able to answer all material questions relating to the suit, or

(*c*) by a pleader, accompanied by some other person able to answer all such questions.

Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court: provided that no such summons shall be issued when the defendant has appeared at the presentation of the plaint and admitted the plaintiff's claim.

Personal appearance of parties.

The provisions of Sections 66 and 67 of *The Code of Civil Procedure* as to the personal appearance of a plaintiff or defendant, and of Section 69 of the same Code as to fixing the day for the appearance of the defendant, shall apply to all cases instituted and tried under this chapter.

Summons to be for final disposal of case, and to direct defendant to produce documents and witnesses.

194. The summons shall be for the final disposal of the suit. It shall direct the defendant to produce any document, the production of which is required by the plaintiff, or upon which such defendant may desire to rely in support of his defence. It shall further instruct the defendant to bring his witnesses on the day specified, if they are willing to attend without summons, or, if they are not so willing to have summons served upon them in sufficient time to enable them to be present on such day:

Provided that if, in any suit for arrears of the rent of a transferable tenure, undertenure, or holding, service of summons on the defendant cannot be effected in accordance with the provisions of *The Code of Civil Procedure*, the Court may direct that a copy of such summons be posted up in some conspicuous place upon the land included in such tenure, undertenure, or holding, and that this shall be deemed a good and sufficient service.

Arrest of the defendant before judgment allowed in certain cases, but not in case of tenure, under-tenure, or occupancy-holding hypothecated for its own rent.

195. If in any such suit as is mentioned in Clause (1) of Section 188 the plaintiff pesents with his plaint an application for the arrest of the defendant before judgment, on the ground that, if a summons be issued in the first instance, such defendant will abscond instead of appearing to answer the claim, the Court shall examine the plaintiff or some one on his behalf acquainted with the facts and shall inspect the documents, if any, produced by the plaintiff, and if it is satisfied—

(*a*) that the defendant is resident within the district in which such Court is held;

(*b*) that there are *primâ facie* grounds for believing the claim to be well-founded; and

(*c*) that if a summons be issued in the first instance, the defendant will abscond instead of appearing to answer the claim;

the Court may issue a warrant for bringing the defendant before it to show cause why he should not give security for payment of the amount claimed by the plaintiff: provided that no such warrant shall be issued in a suit for arrears of rent of any such tenure, undertenure, or occupancy-holding as is mentioned in Section 56.

Time for return of warrant. Notice to be served on defendant when arrested.

196. When any such warrant is issued, the Court shall fix a reasonable time for the return thereof, and the officer entrusted with the service shall at the time of arresting the defendant deliver to him a notice containing the particulars of the claim, and requiring the defendant, if he contest the same, to bring with him any document upon which he may intend to rely in support of the defence.

Procedure when defendant is arrested and brought before the Court under warrant.

197. In any case in which a defendant is arrested under any such warrant, he shall be brought with all convenient speed before the Court, and the Court may, if it thinks fit, and if the defendant fails to show cause to the contrary, require him to give security for payment of the amount claimed by the plaintiff, and, in default of such security being given, may commit such defendant to the civil jail to be there detained until he shall furnish such security or deposit such sum as the Court may order: provided that the defendant may at this stage apply to be declared an insolvent, in which event the provisions of Chapter XX of *The Code of Civil Procedure* shall be applicable.

The provisions of Section 480 of *The Code of Civil Procedure* as to an application by a surety

to be discharged, shall be applicable to any case in which security is given by the defendant: and the provisions of Section 482 of the same Code as to subsistence allowance shall be applicable to any case in which the defendant is committed to the civil jail.

Procedure if warrant of arrest cannot be served upon the defendant.

198. If the defendant cannot be arrested under the warrant, the Court may, on the application of the plaintiff, either postpone the case for such period as it may think proper to enable such plaintiff to apply for another warrant, or may forthwith issue a proclamation, to be affixed in the court-house and at the residence of the defendant, fixing a day for the hearing of the case, which shall not be less than ten days from the date of the publication of such proclamation at the residence of the defendant. If the defendant shall appear in pursuance of the proclamation, he shall be dealt with as provided in Section 197.

Compensation for arrest obtained without reasonable cause.

199. If it shall appear to the Court that the arrest of the defendant was applied for without reasonable cause, the Court may in its decree award to such defendant such sum as it may deem a reasonable compensation for any injury or loss caused by reason of such arrest or of his detention in jail during the pendency of the suit.

Provisions of *The Code of Civil Procedure* as to attachment before judgment, to apply to suits for arrears of rent

200. The provisions of Section 483 to 491 (inclusive) of *The Code of Civil Procedure*, relating to attachment before judgment and compensation for improper attachments, shall be applicable to all such suits as are mentioned in Clause (1) of Section 188: provided that, in a suit for the recovery of arrears of rent due on account of a tenure, undertenure, or occupancy holding to which the provisions of Section 56 are applicable, no such attachment before judgment shall be directed unless the plaintiff can satisfy the Court that such arrears, together with interest and costs of the suit, are not likely to be satisfied by the sale proceeds of such tenure, undertenure, or occupancy holding.

Standing crops, &c., attached, may be reaped, gathered, and stored by defendant, or, if defendant neglect, by plaintiff.

201. Standing crops and other ungathered products, which have been attached under Section 200, may, notwithstanding such attachment, be reaped and gathered by the defendant, and may be stored in such granaries or other places as are commonly used by him for the purpose. If the defendant neglects to do so, the plaintiff may cause such crops or products to be so reaped or gathered, and may store them in such granaries or places as aforesaid, or in some other convenient place in the neighbourhood.

Ad interim sale of crops or products which cannot be kept without deterioration.

The Court may, on the application of any party to the suit, order the sale by any person named in such order, and in such manner and on such terms as it thinks fit, of any such crops or products which cannot be stored and kept without deterioration or loss.

Appearance of Parties.

Defendant may file written statement of defence. No other written statement, unless called for by the Court

202 The defendant may, if he desires to do so file a written statement of his defence. No other written statement shall be filed by either of the parties or received by the Court, provided that the Court may at any time call for a written statement and fix a time or presenting the same.

Court may direct a local investigation.

203. The Court may of its own motion or upon the application of either party to the suit direct a local investigation in any case in which it deems fit. The provisions of Sections 392, 393, 397, 398, 399, and 400 of *The Code of Civil Procedure* shall be applicable to every such investigation.

Judgment at once, if either party fails, without sufficient reason, to produce his evidence.

204. If either party fails, without sufficient cause, to produce the evidence on which he relies, the Court may at once pronounce judgment.

Adjournments

Hearing of suit may be adjourned in what cases

205. The hearing of the suit may be adjourned to a future day to be named in the order of adjournment in the following cases, that is to say—

(1) when either party is not present in person, and his pleader or the person mentioned in Clause (*c*) of Section 193 is unable to answer a material question relating to the case, which the Court is of opinion that the party ought to answer and is likely to be able to answer, if present in person:

(2) when the Court, after proceeding as provided in Section 208, is of opinion that the parties are at issue upon some question upon which it is necessary to here further evidence:

(3) when either party for sufficient reason, which shall be recorded by the Court, requires time for the production of evidence or for any other purpose.

In case (1) the Court shall direct the party to appear on the day to which the hearing is adjourned. In case (2) the Court shall frame an issue for trial at the adjourned hearing. In all cases the Court shall make such order as it sees fit with respect to the costs of the adjournment:

Costs of adjournment.

Provided that when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing to be necessary for reasons to be recorded by the Judge with his own hand.

Hearing to be continuous.

Course to be pursued, if parties fail to appear or produce their evidence at the adjourned hearing.

206. The provisions of Section 157 of *The Code of Civil Procedure* as to the course to be pursued if the parties fail to appear on the day to which the hearing is adjourned; and of Section 158 of the same Code as to the Court proceeding to decide the suit notwithstanding that either party fails to produce his evidence; shall be applicable to all suits instituted and tried under the provisions of this Chapter.

The Hearing.

207. When both parties appear, in the manner directed in the summons or subsequently by the Court, upon the day appointed for the hearing or adjourned hearing, the Court shall—

When both parties present, Court to ascertain and record whether each admits or denies the allegations of fact and documents of the opposite party.

(1) ascertain from the defendant or his pleader (*a*) whether he admits or denies the allegations of fact made in the plaint; (*b*) when he has not filed a written statement or the statement filed by him is insufficient, what allegations of fact he makes in reply to the plaint:

(2) ascertain from the plaintiff or his pleader, whether he admits or denies the allegations of fact made by the defendant:

(3) ascertain from each party or his pleader, whether he admits or denies the genuineness of any document produced by the opposite party.

The Court shall record such admissions and denials.

208. The Court may then examine orally any party appearing in person or present in Court, or any person able to answer any material questions relating to the suit, by whom such party or his pleader is accompanied; and may, if it thinks fit, put in the course of such examination questions suggested by either party.

Oral examination of party or person able to answer material question.

Substance of examination to be reduced to writing and form part of the record.

The substance of such examination shall be reduced to writing by the Judge and shall form part of the record.

209. The evidence of the witnesses in attendance shall be taken orally in open Court in the presence and hearing and under the personal direction and superintendence of the Judge.

Witnesses to be examined in open Court, in presence and hearing of Judge.

It shall not be necessary to take down such evidence in writing at full length; but the Judge, as the examination of each witness proceeds, shall make a memorandum of what he deposes, sufficient to give the gist and substance of his evidence. Such memorandum shall be written by the Judge with his own hand and in his own language, or, if English is not his own language, and he is able to make such memorandum in English, then in the English language. It shall further be signed by him and shall form part of the record: provided that any Judge, making such a memorandum, may also take down at full length any particular question and answer which he may think fit so to take down.

Evidence of witnesses in what manner to be recorded

If the Judge be rendered unable to make a memorandum as above required, he shall cause the reason of such inability to be recorded, and shall cause the memorandum to be made in writing from his dictation in open Court. Every memorandum so made shall form part of the record.

Judge rendered unable to make memorandum to cause it to be made from his dictation.

210. After proceeding in accordance with the provisions of Sections 207, 208, and 209, after considering the documents admitted or proved on behalf of each party, and after hearing any arguments which may be addressed to it by the parties or their pleaders, the Court shall pronounce judgment in open Court usually at once, but, if this is not possible, then on some future day of which due notice shall be given to the parties or their pleaders.

Judgment when to be pronounced

211. (*a*) A decree for money may direct that the amount decreed shall carry interest not exceeding six per centum per annum until such amount is realized.

Interest on account of decree.

(*b*) A decree in any of the suits mentioned in Clause 1, 2, 3 or 5 of Section 188 shall contain the particulars mentioned in Clause (*g*) of Section 190.

Decrees in certain suits describe the land.

(*c*) A decree for arrears of the rent of a tenure, undertenure, or occupancy holding, and also for arrears of the rent of any other tenure, undertenure, or occupancy or other holding, shall show separately the arrears decreed in respect of each tenure, undertenure, or occupancy holding to which the provisions of Section 56 are applicable

Decree to show separately arrears decreed in respect of each tenure, undertenure, or occupancy holding liable to sale for its own arrears

212. Certified copies of the judgment and decree shall be furnished to the parties on application to the Court and at their expense.

Parties entitled to certified copies of judgment and decree.

Execution of Decrees.

General Provisions.

213 Application for execution shall be made by the decree-holder, or his pleader. Such application shall be in writing unless it is made at the time when judgment is pronounced, in which case it may be made verbally, subject, however, to the provisions of Section 216

Application for execution by whom to be made to be in writing unless made when judgment is pronounced, in which case it may be made verbally.

214. If the decree be for the ejectment of a ryot from land, or for restoring a ryot to the possession of land, such decree shall be executed by delivering the possession of such land to the party to whom it has been adjudged by the decree, or to such person as he appoints to receive delivery on his behalf, and, if need be, by removing any person bound by the decree who refuses to vacate such land.

Mode of executing decree for ejectment of ryot or for restoring ryot to possession.

215. If the decree be for the ejectment of a tenure-holder, undertenure-holder, or other person from land in the occupancy of a tenant or other person entitled to occupy the same, or for restoring a tenure-holder, undertenure-holder, or other person to the possession of land in the occupancy of a tenant or other person entitled to occupy the same, such decree shall be executed by affixing a copy of the execution-warrant in some conspicuous place on the land, and by proclaiming to the

Mode of executing decree for ejecting, or restoring to possession a tenure holder, undertenure-holder, or other person in possession of land occupied by tenant.

occupant by beat of drum, or in such other mode as is customary, at some convenient place, the substance of the decree:

provided that if the occupant can be found, a notice in writing containing such substance shall be served upon him, and in such case no proclamation need be made.

Procedure for the Sale of Tenures, Undertenures, and holdings in execution of Decrees for their own Rent.

Form of application for execution of a decree for arrears of rent of a tenure, undertenure, or occupancy holding

216. When a decree has been made wholly or partly for arrears of rent due for a tenure, undertenure, or occupancy holding, the first application for executing such decree in respect of such arrears shall, if in writing, contain, and, if made orally, be supplemented as soon as convenient by a written statement containing the following particulars, that is to say—

(*a*) the number of the suit;
(*b*) the names of the parties:
(*c*) the date of the decree;
(*d*) the amount of rent decreed;
(*e*) the amount of costs decreed;
(*f*) whether any appeal has been preferred from the decree;
(*g*) a sufficient description of such tenure, undertenure, or occupancy holding, containing the area and boundaries, as far as known;
(*h*) the annual rent of such tenure, undertenure, or occupancy holding.

Copy of entry in register prescribed by Section 46, to be filed with application.

In any case, in which such register as is prescribed by Section 46 is kept, there shall with such application or written statement be filed a copy of so much of such register as relates to such tenure, undertenure, or occupancy holding.

If application in proper form, Court shall direct sale of tenure, undertenure, or occupancy holding. If not in proper form, may be amended or rejected.

217. When such application or written statement has been presented in due form, the Court shall make an order for the sale of such tenure, undertenure, or occupancy holding. If such application is not in due form, the Court may allow it to be amended or may reject it without prejudice to a fresh application in proper form.

Notice of sale of tenure, undertenure, or occupancy holding how to be published

218. (*a*) When an order for the sale of such tenure, undertenure, or occupancy holding has been made under Section 217, notice of the sale so ordered shall be given in the following manner, that is to say—

(1) by posting up in the Court-house of the Court aforesaid, a notification containing the particulars specified in Section 216, and announcing that such tenure, undertenure, or occupancy holding will be sold on a date to be stated therein:

(2) by posting up a similar notification in the kachahri of the Collector of the district:

(3) when the decree is not executed by the District Judge, by posting up a similar notification in the Court-house of the District Judge:

(4) by posting up a similar notification on some conspicuous place upon the land of such tenure, undertenure, or occupancy holding:

(5) by posting up a similar notification upon some conspicuous place in the town or village nearest to which such tenure, undertenure, or occupancy holding is situate.

Notification of sale of tenure or undertenure to state that sale shall be subject to incumbrances, if sum bid satisfy decree, otherwise that sale may be made free of incumbrances.

(*b*) In the case of a tenure or undertenure, such notification shall further announce that such tenure or undertenure, shall first be put up to auction subject to the registered incumbrances specified in Section 221, and shall be sold subject to such incumbrances, if the sum bid is sufficient to liquidate the amount of the decree and costs: and that otherwise it may, if the decree-holder so desire, be sold free of all incumbrances on a subsequent day of which due notice will be given.

Occupancy holding to be sold free of all incumbrances.

(*c*) In the case of an occupancy holding, the notification shall announce that such holding will be sold free of all incumbrances.

Date of the sale how to be fixed.

(*d*) The date of the sale shall be so fixed that it shall be not less than twenty days from the date on which the notification is posted up as required by paragraph (1) of Clause (*a*) and shall not fall on a holiday.

Sale to be stayed only by payment into Court of amount of decree with costs, or by confession of satisfaction by decree-holder

219. The amount of the decree, including the costs decreed, together with the costs incurred in order to the sale, may be paid into Court at any time before such tenure, undertenure, or occupancy holding is put up for sale and the bidding commences. The sale shall not be stayed unless such amount is so paid into Court, or unless the decree-holder makes an application in writing to this effect on the ground that the decree has been satisfied out of Court. In any such case no application for any further execution of the decree shall be received.

What persons may pay the amount of the decree and costs into Court, so as to stay the sale.

220. The amount of the decree and costs mentioned in Section 219 may be paid into Court by any of the following persons, that is to say—

(*a*) by the judgment-debtor;
(*b*) by any one who alleges that he and not the judgment-debtor is the duly registered owner of the tenure, undertenure, or occupancy holding notified for sale, and produces a copy of such register as is prescribed by Section 46 in support of such allegation;
(*c*) by any one who has an interest in, or lien upon, such tenure, undertenure, or occupancy holding;
(*d*) in the case of a tenure, undertenure, or occupancy holding being notified for sale, by any one having an interest which would be endamaged by the sale of such tenure, undertenure, or occupancy holding free of incumbrances.

Any person who pays money into Court under Clause (*c*) or (*d*) shall be entitled to sue for the amount so paid as money lent, and to recover the same from the person in consequence of whose default to pay rent or in consequence of whose wrongful act the tenure, undertenure, or occupancy-holding was notified for sale.

Person paying money into Court under Clause (*c*) or (*d*) may sue defaulter for the same as money lent to him.

In the case of any such tenure as is described in Section 148, the provisions of Sections 156 and 157 shall further be applicable.

Sections 156 and 157 applicable in the case of certain tenures.

221. (*a*) Upon the day appointed for the sale, such tenure or undertenure shall first be put up to auction, subject to incumbrances, that is to say, so as that the purchaser shall not be entitled to avoid any incumbrance created by the judgment-debtor or his predecessor in title; and, if the bidding reaches a sum sufficient to liquidate the amount of the decree and costs including the costs of sale, such tenure or undertenure shall be sold subject to such incumbrances.

Tenure or undertenure to be first put up to sale subject to incumbrances, and sold, if bidding cover amount of decree and costs.

Explanation.—The term "incumbrances" in this Section means and includes every incumbrance, lien, sub-lease, or subordinate interest which the defaulting holder of the tenure or undertenure was by law competent to create in derogation of his own interest, and which was created by an instrument in writing duly registered, subject to this condition that a copy of such instrument have been served upon the person to whom the rent of such tenure or undertenure is payable. Every registering officer shall, when required, cause any such copy to be served on any such person in the manner provided in Part VII of *The Indian Registration Act*, 1877, for the service of summons. In the case of incumbrances created before the commencement of this Act by instruments in writing duly registered under the law applicable thereto, such copy may be served at any time within six months after such commencement. The purchaser at a sale under this Clause shall be entitled to proceed within one year after he has knowledge of the same to avoid and annul every incumbrance, lien, sub-lease, or subordinate interest other than those above defined and specified.

Meaning of "incumbrances."

(*b*) If the property to be sold be an occupancy-holding, it shall be put up to auction free of all incumbrances created by the judgment-debtor or by his predecessor in title.

Occupancy-holding to be sold free of all incumbrances.

222. (*a*) If the bidding for a tenure or undertenure does not reach a sum sufficient to liquidate the amount of the decree and costs as aforesaid, and if the decree-holder thereupon desires that such tenure or undertenure shall be sold free of incumbrances, the officer holding the sale shall at his request withdraw such tenure or undertenure from the auction, and shall publicly intimate that it will, unless the said amount be paid into Court, be put up to auction and sold free of incumbrances upon some future sale day not less than fifteen or more than thirty days afterwards. A notification to the same effect shall be posted up with all convenient despatch on some conspicuous place upon the land of such tenure or undertenure. Upon such latter mentioned sale-day such tenure or undertenure shall be put up to auction and sold free of incumbrances.

If bidding does not cover amount of decree and costs, and decree-holder desires a sale free of incumbrances, such sale may be ordered upon an adjourned date.

(*b*) If no bid is made for such tenure or undertenure when put up to auction under Clause (*a*) of this Section, or if no bid is made for an occupancy-holding when put up to auction under Clause (*b*) of Section 221, the decree-holder shall be required to bid, and, if he refuses to do so, he shall not be entitled to proceed to execute the decree against the person or other property, movable or immovable, of the judgment-debtor.

If no bid, decree-holder to be required to bid.

223. The following rules shall be applicable to every sale made under Section 221 or Section 222:—

Rules applicable to sales under Section 221 or Section 222.

(1) The sale shall be by auction upon the day or adjourned day appointed and notified as provided in Section 218, or Clause (*a*) of Section 222, or if this be not convenient, upon the following open day. The decree-holder and all persons other than the defaulter may bid.

(2) The tenure, undertenure, or occupancy-holding shall be knocked down to the highest bidder, and he shall be required to deposit immediately twenty-five per centum of the amount of his bid. In default of such deposit, the tenure, undertenure, or occupancy-holding shall be put up again and sold forthwith upon the same day, or if this be not convenient, upon the following open day; and if the price realized is less than the amount bid by the person who failed to deposit twenty-five per centum of his bid, the difference may be recovered from such person under the law for enforcing the payment of money in satisfaction of a decree for arrears of rent.

(3) The balance of the purchase-money shall be paid up before sunset of the eighth day from that on which the sale took place, such sale-day being reckoned as one of the eight, or, if the eighth day be a holiday, then on the first open day. If such balance be not so paid, the deposit shall be forfeited to Government; the tenure, undertenure, or occupancy-holding shall be re-sold under Clauses (1) and (2); the purchaser, who failed to make good the balance as aforesaid, shall forfeit all claim to such tenure, undertenure, or occupancy-holding, or to any part of the sum for which it may be subsequently sold; and, if such sum be less than the price bid by such purchaser, the difference may be recovered from him under the law for enforcing the payment of money in satisfaction of a decree for arrears of rent.

224. (*a*) When the whole of the purchase-money has been paid, the Court shall confirm the sale, if there be no valid reason to the contrary; and shall grant a certificate stating the name of the person who at the time of sale is declared to be the

Sale to be confirmed when price paid. Certificate to be given to the purchaser. Officer to be deputed to put him in possession.

purchaser, and the date of such sale. Such purchaser shall, if required, produce and show such certificate when applying for registration under the provisions of Section 37. If the purchaser makes application to such effect, and if he deposits the necessary costs, the Court shall depute an officer to put him in possession of the tenure, undertenure, or occupancy holding, and to notify the fact of the purchase to the ryots and other persons whom it may concern.

(*b*) The provisions of Section 317 of *The Code of Civil Procedure* shall apply to every certified purchaser under Clause (*a*).

Benami purchaser not recognized.

225. The person who purchases a tenure or undertenure under the provisions of Clause (*a*) of Section 222 shall be entitled to proceed within one year to avoid and annul all incumbrances imposed thereupon by any holder thereof, his representatives, or assignees, unless, in the case of incumbrances allowed by law, the right of making the same was expressly granted by the written engagement under which the holder was originally let into possession, or by the subsequent written authority of the person so letting into possession, his representatives, or assignees:

Purchaser under Clause (*a*) of Section 222 to acquire tenure or undertenure free of all incumbrances not made under written authority of landlord.

provided that no such purchaser may eject any settled ryot, or cancel *bonâ fide* engagements made with such ryots except it be proved in a regular suit brought by such purchaser for the adjustment of the rent, that a higher rent would have been fairly demandable at the time when such engagements were contracted:

Proviso. Settled ryots may not be ejected.

provided also that no such incumbrances may be avoided in any case in which the purchaser is the judgment-debtor or a person acting in fraudulent collusion with him for the purpose of disencumbering the tenure or undertenure.

Incumbrances may not be avoided, if judgment-debtor or person colluding with him purchase.

The person who purchases an occupancy holding under the provisions of Clause (*b*) of Section 221 shall acquire the same free of all incumbrances created by the former holder or his predecessors in title.

Occupancy holding to be acquired free of all incumbrances.

Subject to these provisions, any such purchaser shall be entitled to proceed under the provisions of this Act to enhance the rent of the ryots holding land in the tenure, undertenure, or occupancy holding purchased by him; but no ryot shall be liable to ejectment otherwise than as provided in this Act.

Purchaser may enhance rents according to law; but may not eject save as provided in this Act.

226. The following rules shall be observed in disposing of the proceeds of the sale, that is to say—

Rules for disposal of the sale-proceeds

(1) There shall first be paid to the decree-holder the costs incurred by him in bringing the tenure, undertenure, or occupancy holding to sale.

Cost of sale to be paid first.

(2) There shall in the next place be paid to the decree-holder the amount due to him under the decree, in execution of which the sale was made.

Amount due under the decree to be next satisfied.

(3) If there remains a balance after these sums have been liquidated, there shall be paid to the decree-holder therefrom any rent which may have become due to him for such tenure, undertenure, or occupancy holding after the date upon which the latest arrear recovered by the decree became due: provided that the decree-holder shall not under this rule recover any rent which he might have included in this suit in which he obtained such decree: and provided also that in no case shall he obtain rent for more than six months after the date of the final decree. If the judgment-debtor dispute the decree-holder's right to receive such rent, the Court shall determine such dispute, and such determination shall have the force of a decree.

If balance remains rent which fell due after the arrears recovered by the decree may be paid therefrom.

(4) If there remains a balance after the liquidation of the rent mentioned in Clause 3, such balance shall be paid to the judgment-debtor upon his application.

Balance, if any, after liquidating such rent, to be paid to the judgment-debtor.

227. (*a*) The judgment-debtor may apply to the Court to set aside the sale on the ground that there was a material irregularity in publishing or conducting it, and that he has sustained substantial injury by reason of such irregularity: and the Court may set aside such sale, if material irregularity and such substantial injury are proved, and not otherwise.

Sale may be set aside only if material irregularity and substantial injury are proved.

(*b*) In any case in which a sale is ordered to be set aside, the order shall direct that the purchase-money be refunded to the purchaser with or without interest, as the Court in its discretion may see fit, and such order may be enforced by the Court as a decree for money against any person into whose hands such purchase-money or any portion thereof may have passed, if such person have been served with notice of the application made under Clause (*a*).

Order setting aside sale to direct refund of the purchase-money, and may be enforced as a money decree.

(*c*) If such purchaser has received possession of the tenure, undertenure, or occupancy holding, the Court may take an account of any rent paid by him to the landlord of such tenure, undertenure, or occupancy holding, and also of any rents or profits received by him, and may make and order directing the payment of any balance found thereupon to be due to the person entitled to receive the same. Such order shall have the force of a decree: provided that the taking of such account shall not be permitted to delay the restoration of the judgment-debtor to possession.

When auction purchaser has obtained possession, Court may take an account.

228. In the following cases, that is to say—

(1) when a tenure, undertenure, or occupancy holding has been sold in execution of a decree for arrears of rent due in respect thereof, and the amount of such decree has not been satisfied by the proceeds of such sale:

Cases in which decree may be enforced by attachment and sale of movable and immovable property, and by arrest and imprisonment of judgment debtor.

(2) When a decree has been made for arrears of rent due in respect of land not forming a tenure, undertenure, or occupancy holding:

(3) When a decree has been made or damages on account of the illegal exaction of rent or cesses, or on account of the refusal of receipts:

(4) When a decree has been made for costs: the decree may be enforced by any or all of the following methods, that is to say, (*a*) by the attachment and sale of the movable property of the judgment-debtor; (*b*) by the attachment and sale of the immovable property of the judgment-debtor; (*c*) by the arrest and imprisonment of the judgment-debtor.

Of Arrest and Imprisonment.

Order for committing to, or detaining in jail, a judgment-debtor arrested before judgment, who fails to satisfy the decree.

229. If the judgment-debtor, having given security for his appearance under the provisions of Section 197, is present before the Court, or if he has been committed to jail under the provisions of the same Section, the Court may, upon the application of the decree-holder and upon his depositing subsistence-money in accordance with the provisions of Section 339 of *The Civil Code of Procedure*, make an order, that such judgment-debtor, unless he at once pays the amount of the decree, be committed to, or detained in, jail. If no such application is made, and the judgment-debtor is in jail, he shall be released upon the expiry of three clear days after judgment being pronounced.

Execution may be had against surety, who fails to deliver judgment-debtor into custody.

230. If the judgment-debtor, having given security for his appearance, is not present when judgment is pronounced, and the surety fails to deliver him into custody when required so to do, process of execution may be taken out against the surety in the same manner as if a decree for the amount due by the debtor had been passed against such surety.

Of Appeals.

Appeals from Original and Appellate Decrees to be governed by the provisions of *The Code of Civil Procedure*.

231. Subject to the provisions of Section 174 of this Act, the provisions of Chapter XLI of *The Code of Civil Procedure* as to appeals from Original Decrees, and the provisions of Chapter XLII of the same Code as to appeals from Appellate Decrees, shall be applicable to all suits instituted and decided under the provisions of this Chapter.

No appeal in certain suits for arrears of rent in which the amount claimed does not exceed fifty rupees.

232. Notwithstanding anything contained in Section 231, no appeal shall lie in any suit brought for arrears of rent in which the amount claimed does not exceed fifty rupees, and in which no question of right to enhance or vary the rent of a tenant has been determined, when such suit has been tried and decided by a Munsif or other Judicial Officer specially empowered by the Lieutenant-Governor of Bengal to exercise final jurisdiction under this Section. The District Judge may call for the record of any case so decided, and, if he is satisfied that a failure of justice has been caused by a substantial error, defect, or irregularity in the proceedings or in the decision, he may pass such orders as shall to him appear proper. Such orders shall be final.

District Judge to have power of revision.

Appeals from orders governed by the provisions of *The Code of Civil Procedure* Proviso.

233. The provisions of Chapter XLIII of *The Code of Civil Procedure* as to appeals from orders shall be applicable to all suits instituted and tried under the provisions of this Chapter: provided that no appeal shall lie against the order of a District or Additional Judge in any such suit as is mentioned in Section 232.

Review of Judgment.

Review of judgment to be regulated by the provisions of *The Code of Civil Procedure*.

234. Subject to the provisions of Section 175 of this Act, the provisions of Chapter XLVII of *The Code of Civil Procedure* as to review of judgment shall be applicable to all suits instituted and tried under the provisions of this Chapter.

Res Judicata: proviso.

235. The provisions of Section 13 of *The Code of Civil Procedure* shall be applicable to all suits instituted and tried under the provisions of this Chapter: provided that the decision in any such suit of a question concerning the title to, or any interest in, immovable property shall not be a bar to the trial of the same question in any suit tried under *The Code of Civil Procedure* and not under the provisions of this Chapter.

Discretion to issue process free of charge.

236. If in any case a Civil Court is satisfied that a party is unable to pay the cost of any necessary process in any suit instituted or pending under this Chapter, it may direct such process to be served free of charge.

Revenue Agent may in Munsif's court do any act which may be done by a Pleader.

237. Anything which may be done by a Pleader under the provisions of this Chapter or under any of the provisions of *The Code of Civil Procedure* mentioned herein, may be done in any case instituted in the court of a Munsif by any such Revenue Agent as is mentioned in the proviso to Section 10 of Act XVIII of 1879.

THE FIRST SCHEDULE.

(*See Section 2.*)

Number and year.	Subject of Act	Extent of repeal.
	Regulations of the Bengal Code.	
VIII of 1793	A Regulation for re-enacting, with modifications and amendments, the rules for the Decennial Settlement of the Public Revenue payable from the lands of zemindars, independant talukdars, and other actual proprietors of land in Bengal, Behar, and Orissa, passed for those Provinces respectively on the 18th September 1789, the 25th November 1789, and the 10th February 1790 and subsequent dates.	Sections 51, 52, 53, 54, 55, 64, and 65.

Number and year.	Subject and Act.	Extent of repeal.
XII of 1805 .	A Regulation for the settlement and collection of the Public Revenue in the zillah of Cuttack, including the pergunnahs of Puttespore, Kummardichour, and Bagrae, at present included in the zillah of Midnapore.	Section 7.
V of 1812 .	A Regulation for amending some of the rules at present in force for the collection of the Land Revenue.	Sections 2, 3, 4, 26, and 27.
XVIII of 1812 .	A Regulation for explaining Section 2, Regulation V, 1812, and rescinding Sections 3 and 4, Regulation XLIV, 1793, and Sections 3 and 4, Regulation L, 1795, and enacting other rules in lieu thereof.	Preamble and Sections 2 and 3.
VIII of 1819 .	A Regulation to declare the validity of certain Tenures and to define the relative rights of Zemindars and Patni Talukdars; also to establish a process for the Sale of such Taluks in satisfaction of the zemindar's demand of rent, and to explain and modify other parts of the system established for the collection of rents generally throughout Bengal.	The whole Regulation.
1 of 1820 .	A Regulation for providing that all sales of certain Taluks, made answerable by sale for arrears of the zemindar's rent, shall be conducted in the mode prescribed by Regulation VIII, 1819, for the sales therein described.	The whole Regulation.
XI of 1825 .	A Regulation for declaring the rules to be observed in determining claims to lands gained by alluvion or by dereliction of a river or the sea.	In Clause 1 of Section 4, from and including the words "nor if annexed to a subordinate tenure" to the end of the Clause.
	Acts of the Bengal Council.	
VI of 1862 .	An Act to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal).	The whole Act.
VIII of 1865 .	An Act to amend the law for the sale of such undertenures as by the title-deeds or established usage of the country are transferable by sale or otherwise for the recovery of rent due in respect thereof.	The whole Act.
IV of 1867 .	An Act to explain and amend Act VI of 1862, passed by the Lieutenant-Governor of Bengal in Council, and to give validity to certain Judgments.	The whole Act.
VIII of 1869 .	An Act to amend the Procedure in suits between Landlords and Tenants.	The whole Act.
	Acts of the Governor-General in Council.	
XXV of 1850 .	An Act for the forfeiture to Government of deposits made on incomplete sales of land under Regulation VIII, 1819, and Act IV, 1846.	So much as is unrepealed.
XXXIII of 1850 .	An Act for amending the forms necessary for the sale of Patni Tenures in Bengal.	The whole Act.
VI of 1853 .	An Act relating to summary suits for arrears of rent, to sales of Patni Taluks and other saleable tenures, and to sales of land in satisfaction of summary decrees for rent.	The whole Act.
X of 1859 .	An Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.	The whole Act.

THE SECOND SCHEDULE.

(See Section 50.)

FORM A.

I, A. B., &c., do declare that I [*or C. D., when the tenant A. B. is not personally cognizant,*] am in possession of [*describe the tenure, undertenure, holding, or land, giving the area and boundaries when possible*] the annual rent of which is [*state amount*], and that such rent was payable to E. F. up to [*date of last payment made*] and that on the present date there is due in respect of such [*tenure, undertenure, holding, or land*], the sum of , inclusive of interest, and that no other or further sum is due in respect of such [*tenure, undertenure, holding, or land*], and I do further declare that

[*in case (a) of Section 50*]

I desire to deposit my rent, as I believe that the said E. F. will not be willing to receive the same, and to grant me a receipt. *Or*

[*in case (b) of Section 50*]

That the said E. F. is dead, and that G. H., I. J., and K. L. are his heirs and are coparceners, and they have not appointed a common manager, nor has any such common manager been appointed by the District Judge, and that they were not ready to give me, nor could I obtain from them, their joint receipt for the said sum of *Or*

[*in case (c) of Section 50*]

That the said E. F. is dead, and his estate is claimed by his widow G. H., and also by one I. J., and I [*or* C. D.] am [or is] in reasonable doubt as to which of the said two claimants is entitled to the rent.

THE THIRD SCHEDULE.

(See Section 98.)

PART I.—*Suits.*

Description of Suit.	Period of Limitation.	Time from which period begins to run.
1. Under Clause (4) of Section 153 by an undertenure-holder for price of interest avoided by sale, or for compensation.	Two months .	The date of the sale.
2. When a deposit of rent has been made under the provisions of Section 50, for the recovery of arrears of rent which fell due before the date of such deposit.	Six months .	The date of service of notice of the deposit under Section 53.
3. Under Clause (8) of Section 71 to enforce a forfeiture for disclaimer.	Three months .	The date of the disclaimer.
4. For damages on account of illegal exaction of rent.	Six months .	The date of the illegal exaction.
5. For damages on account of the extortion of rent by confinement or other duress.	Six months .	The date of the extortion.
6. For damages on account of the excessive demand of rent.	Six months .	The date of the excessive demand.
7. For damages on account of the illegal exaction of any unauthorized cess or impost.	Six months .	The date of the illegal exaction.
8. For damages on account of the refusal of receipts for rent.	Six months .	The date of the refusal.
9. For abatement of rent of tenure-holder, undertenure-holder, or ryot holding at fixed rates.	One year . .	The date of the commencement of the cause which entitles to abatement.
10. For abatement of the rent of a ryot having a right of occupancy on the ground of the area of his holding having been diminished by diluvion.	One year . .	The date of the diminution, or where it is gradual, the completion thereof. A suit may be instituted at any time while such gradual diminution is going on.

PART I.—*Suits*—continued.

	Description of Suit.	Period of Limitation.	Time from which period begins to run.
11.	For abatement of the rent of a ryot having a right of occupancy on the ground that quantity of land has been proved by measurement to be less than quantity for which rent previously payable.	One year . .	The date of the measurement.
12.	For abatement of the rent of a ryot having a right of occupancy, on the ground that the value of the produce has been decreased by any cause beyond his power.	Three years .	The date of the operation of such cause, *or* the date of the fall in price.
13.	For abatement of the rent of a ryot having a right of occupancy, on the ground that the productive powers of the land have been decreased by any cause beyond his power.	Three years .	When the operation of such cause becomes known.
14.	To eject any tenure-holder, undertenure-holder, or ryot on account of any breach of a condition in respect of which there is a contract expressly providing that ejectment shall be the penalty of such breach.	One year . .	The date of the breach.
15.	For damages on account of illegal distraint or sale under Section 122 or Section 123.	One year . .	The date of the distraint or sale, as the case may be.
16.	By the purchaser of an estate, tenure, or undertenure, sold for arrears of revenue or rent, to avoid a tenure, undertenure, or other tenancy or subordinate interest, in any case in which he is entitled to avoid the same.	One year . .	The date after confirmation of the sale upon which such purchaser first has knowledge of the existence of such tenure, undertenure or other tenancy or subordinate interest.
17.	By a ryot against his landlord to recover the possession of a holding from which such ryot has been illegally ejected by such landlord, in any case not governed by Section 9 of The Specific Relief Act, 1877.	One year . .	The date of dispossession.
18.	By a transferree or successor against a landlord under Section 52 to compel him to admit to registry a succession to, or transfer of a tenure, undertenure, or occupancy-holding.	One year . .	The date of the express or implied refusal.
19.	For the recovery of arrears of rent when no deposit of rent has been made under the provisions of Section 50.	Three years .	The last day of the Bengali year, or the last day of the month of Jeyt of the Umli or Fusli or Willaiti year in which the arrear claimed became due.
20.	By a tenure-holder or undertenure-holder against his landlord to recover the possession of a tenure or undertenure from which such tenure-holder or undertenure-holder has been illegally ejected by such landlord, in any case not governed by Section 9 of The Specific Relief Act, 1877.	Three years .	The date of dispossession.
21.	For determination of the conditions of tenancy under Section 169.	At any time during the tenancy.	The commencement of the tenancy.

PART I.—*Suits*—concluded.

Description of Suit.	Period of Limitation.	Time from which period begins to run.
22. Under Clause (*d*) of Section 161, for damages on account of refusal to furnish a jummabandi.	One year . .	The date of the express or implied refusal.
23. For the recovery of money or papers in the hands of an agent, or to compel an agent to render an account under section 183 or 184.	At any time during the agency or within one year after the determination thereof.	The receipt of the money or papers by the agent.
24. Like suit where person having right to sue has, by means of fraud, been kept from knowledge of the receipt of any such money by the agent, or where a fraudulent account has been rendered by agent.	One year . .	The time when the fraud first became known to the person having the right to sue, provided that in no case shall there be allowed more than three years from the termination of the agency.
25. For apportionment of rent under Section 55.	At any time during the tenancy.	

PART II.—*Appeals.*

Description of Appeal.	Period of Limitation.	Time from which period begins to run.
26. From any decree or order under this Act to the Court of a District Judge.	Thirty days .	The date of the decree or order appealed against.
27. From any order of a Collector under this Act to the Commissioner.	„ „ .	The date of the order appealed against.

PART III.—*Applications.*

Description of Application.	Period of Limitation	Time from which period begins to run.
28. Under Clause (*a*) of Section 227 to have a sale set aside.	Thirty days .	The date of the confirmation of the sale.
29. Under Clause (*c*), Section 45, for an order directing a proprietor to receive security tendered by the transferree or devisee of a tenure.	Three months .	The date of the express or implied rejection of such security.
30. By a purchaser under Clause (*a*) of Section 224 to be put in possession of a tenure, undertenure, or occupancy-holding purchased by him.	„ „ .	The date of the confirmation of the sale.
31. For the execution of a decree or order made under this Act, or any Act repealed by this Act, and not being a decree for a sum of money exceeding R500, exclusive of any interest which may have accrued after decree upon the sum decreed, but inclusive of the costs of executing such decree. When the judgment-debtor has by fraud or force prevented the execution of the decree within three years, the court may allow a further period not exceeding one year.	Three years .	(1) The date of the decree or order; or (2) where there has been an appeal, the date of the final decree or order of the Appellate Court; or (3) where there has been a review of judgment, the date of the decision passed on the review.
32. For the execution of a decree for a sum of money exceeding R500 calculated as in Article 31.	The time provided by The Indian Limitation Act, 1877.	As provided in the Indian Limitation Act, 1877.

Note by Mr. Reynolds on enhancement in Behar.

THE following passage is taken from the letter of the Government of Bengal, dated the 7th September 1878, which appointed the Rent Committee for Behar:—

"In Bengal the primary want is a ready means of recovering rents which are clearly due, and which are withheld either for the sake of delay, or in pursuance of some organised system of opposition to the zemindar. In Behar, what is most wanted is some ready means of enabling the ryot to resist illegal distraint, illegal enhancement, and illegal cesses, and to prove and maintain his occupancy rights."

The conditions of the question have not altered since these words were written: and it is natural to ask whether it can reasonably be expected that objects so different, and indeed so opposite, in their character, can satisfactorily be attained by one and the same legislative enactment.

The peculiar circumstances of Behar are discussed in paragraphs 146-156 of the report of the Commission, and Chapter XII of the draft Bill contains the special provisions which the Commissioners consider to be required for that province. The chapter contains only six sections, and deals with the two questions of the right of occupancy and of rents payable in kind. All the other provisions of the Bill are apparently intended to apply equally to Bengal and Behar.

It was strongly urged upon me during my recent visit to Bankipore that the great evil which calls for remedy in Behar is the arbitrary enhancement of rent at the will of the landlord. One able officer went so far as to say that the one thing which Behar wants is a law which shall prevent any enhancement whatever of rent for the space of a generation. Without entirely subscribing to this proposition, I may say that my enquiries have led me to the conclusion that the average rate of rent in Behar is extremely high, amounting in many cases, perhaps in the majority of cases where unprotected * ryots are concerned, to a rack-rent.

* By unprotected ryots I mean ryots who are not entitled to hold at fixed rates, or (as many Brahmins and Rajpoots hold) at a customary privileged rate. The right of occupancy is practically no protection.

As the Behar Landholders' Association, in their recent memorial to Government, have flatly denied that high rates prevail in Behar, it may be proper to adduce some evidence on the point. The Association take Gya as a typical Behar district, a large proportion of the land being cultivated on the bhaoli system. They say that in Gya the total road cess is Rs. 1,08,830, and that this represents a total district rental of Rs. 34,82,560. They go on to compare this with the rentals of seven districts which they consider to be by far the most advanced districts of Bengal, and they show that the rental per square mile in each of these districts is higher than the rental in Gya. Rents, therefore, in Gya are "obviously low:" *q. e. d.*

It is not clear why the comparison here should be made with the most advanced districts in Bengal, in which rents may be supposed to be highest. The case which the Association desire to establish would have been much stronger if they could have brought figures to show that the average rental in Gya (which is certainly not a specially wealthy or advanced district) is lower than in an average district of Bengal. The comparison, however, is entirely vitiated by the fact (which it is astonishing that the Association should have overlooked) that the road cess in Gya is levied at half the maximum rate. The valuation of the district, instead of being something less than 35 lakhs, is really above 70 lakhs.

The true figures are accordingly very different from those embodied in the memorial of the Behar Landholders' Association. The road cess returns for 1878-79 give the following valuations of land per square mile for each district of the Patna Division:—

	Rs.
Patna	2,760
Gya	1,500
Shahabad	1,300
Mozufferpore	1,171
Durbhunga	1,922
Sarun	2,080
Chumparun	742

It may be worth while to examine these figures somewhat more closely. It will probably be admitted that the road cess valuation, based as it is upon returns furnished by the zemindars themselves, and itself furnishing the basis of the road cess assessment, is never more than the real district rental, and generally considerably less. Sarun is undoubtedly the most highly cultivated and the most thickly populated district in Behar, and it might reasonably have been expected to head the valuation list. I find, however, that Mr. MacDonnell is of opinion that the Sarun district has been greatly under-assessed, probably by not less than 25 per cent. In Gya there is a considerable area of hills and waste land, and this tends to reduce the valuation. Shahabad is the most prosperous district in the division. In the north a large proportion of the land is held under guzastha tenures at fixed rates, while the southern part of the district is hilly, and yields little rent. Yet the whole average is as high as Rs. 1,300, and this makes it clear that those ryots in the north of the district who do not enjoy the protection of fixed rates must pay a high rental. The average in Durbhunga rises to Rs. 1,922, in spite of the large area of unoccupied land in the Mudhubanee subdivision. The circumstances of Chumparun are exceptional, the proportion of waste land being very large. The subdivision of Bettia, which includes four-sevenths of the district, has a population of only 279 to the square mile. Yet the average valuation in Chumparun is as high as in Nuddea, and much higher than in such districts as Furreedpore and Cuttack.

Let us now compare the above figures with those obtained for the districts of Bengal. The highest average valuations per square mile in Bengal are those given below:—

	Rs.
Burdwan	2,100
Hooghly	2,100
Noakholly	1,900
24-Pergunnas	1,500
Rajshahye	1,500
Backergunge	1,400
Rungpore	1,300
Moorshedabad	1,290
Chittagong	1,210

There is no other district in Bengal in which the valuation per square mile is as high as Rs. 1,200.

The point which seems to deserve attention is not merely that the highest valuation in Behar greatly exceeds the highest valuation in Bengal, but that in the Patna Division the land in *every* district (with the single exception of Chumparun) bears so high an average rental.

A valuation of Rs. 2,000 per square mile implies an average rental of above Rs. 3 per acre: and this is a high rate to be yielded by a whole district, inclusive of hills, forests, and uncultivated lands. Taking the Patna Division as a whole, it would seem that the incidence of rent on the land for which rent is actually paid cannot be less than Rs. 5 an acre. The usual rate for land under sugarcane is Rs. 12-8 an acre: for poppy lands it is Rs. 10. The bhaoli system, again, tends to keep the average rental high. Most of the bhaoli land is under paddy: and in a good season the paddy crop on an acre of land will fetch about Rs. 30, of which the landlord takes one-half, and in many cases nine-sixteenths.

The question may be looked at from another point of view, by considering, not the amount which is taken by the landlord, but the value of the share which is left to the ryot. In Backergunge the cultivator is probably in a better state of material comfort than in any other part of India, or perhaps even of the world: and this is because so large a part of the fruit of his labour remains in his own hands. It is said that in some parts of Backergunge the rent is not more than one-fortieth of the gross produce. The average rent is probably double this, or one-twentieth: but let us suppose it to be even as much as one-sixteenth. The valuation in Backergunge being Rs. 1,400 per square mile, the ryot's share of the produce will be Rs. 15 for every rupee received by the landlord, or Rs. 21,000 per square mile. The population of Backergunge is 518 to the square mile; so that an annual sum of Rs. 40 a head is left for the support of each man, woman, and child.

Compare these results with Gya, which is selected by the Landholders' Association as a representative Behar district. In a large part of Gya the landlord takes half the crop, and his share is probably never less than one-fourth of the produce. It would be a fair estimate to put down the general average at one-third. The Gya valuation is Rs. 1,500 per square mile, and the ryot gets Rs. 2 for each rupee of this amount. The population of Gya is 415 to the square mile, which leaves a sum of Rs. 7 a head for each person in Gya, against Rs. 40 in Backergunge.

The above figures are of course far from being accurate, for they assume the whole population to be agricultural: and it happens that the proportion of non-agriculturists is much higher in Gya than in Backergunge. But even when allowance is made for this, the contrast is sufficiently noteworthy.

The high rate of rent, however, is not the only, nor indeed the greatest, evil. The increasing price of produce forms a counteracting influence which would in time have the effect of reducing almost any rack-rent to an equitable rate. The real mischief in Behar is that rents are enhanced at the mere will and pleasure of the landlord. The Lieutenant-Governor is aware how this has lately been done in Durbhunga. I was told during my recent visit to Bankipore that the extension of the right of occupancy was really a question of no practical importance in Behar. What, it was asked, is the value of a right which simply entitles the ryot to go on paying whatever rent the landlord chooses to demand? The right to hold the land (it was urged) is a mockery, and the exemption from eviction is a worthless boon. Ryots are hardly ever evicted in Behar; for the new tenant could not possibly pay more than the old one.

The argument thus returns to the question raised at the beginning of this paper, *viz.*, whether a Bill, of which one of the main objects is a ready means of recovering and enhancing rents, is applicable to a province in which rents are already too high, and in which the arbitrary enhancement of rent is one of the principal evils to be encountered and overcome. It is worthy of notice that, whereas at the conferences held at Dacca and Hooghly a very general opinion was expressed in favour of the principle of the procedure laid down in Chapter XV of the draft Bill, the district officers whom I met at Bankipore declared that the provisions of that chapter would work nothing but mischief in Behar. It was not so much that they feared the direct result of the law being put in force, as that they objected to any legislative recognition of a new system of enhancement, and they apprehended that the threat of proceedings under the chapter would be used by the landlords as an engine for further exactions.

Enhancement in Behar, if it is not to be altogether prohibited, at least requires to be fenced round with restrictions which are not necessary in Bengal. I found the Behar officers disposed to insist strongly on the recommendation of the Behar Rent Committee, that enhancement shall not be allowed, except at the suit of a person having a *permanent* interest in the land. I pointed out that this would bar all enhancement on the part of Hindu widows, or of trustees, or even of the Court of Wards; but I was met by the reply that enhancement by ticcadars must be prohibited at any cost, and that the only way to make this prohibition effectual was to say at once that only permanent holders shall enhance.

Again, the draft Bill makes some alteration in the first ground of enhancement provided by section 18 of Act VII (B.C.) of 1869. The existing law refers to "the prevailing rate in the places adjacent," but the Bill speaks of "the prevailing rate in the vicinity." We think, says the report, that the proof will be facilitated by enlarging the area from which the materials for evidence may be taken. The Behar Committee, on the contrary, proposed to restrict the area to "the same village, or a village immediately adjoining:" and the local officers strongly adhere to this restriction. It is not their object or desire to facilitate the proof.

The draft Bill makes no allowance for increase in the cost of production, and it authorizes enhancement on the ground of a rise in the price of produce. It was represented to me at Bankipore that the increased cost of production must be allowed for, and that enhancement should only be permitted on account of an increase in the price of the *disposable portion* of the produce, as the ryot gains nothing from the higher price of that portion of his crop which he and his family consume. In other words, the rise of price should be applied to the net, and not to the gross, produce. It was also urged that the law should take account of the fact that the ryot does not get what would

ordinary be recognized as the market price, but the village hât price, which is considerably lower. These limitations were defended on the ground that the present scale of rents leaves *no margin* whatever, and that though in Bengal it may be unnecessary to take into consideration small items of this kind, the case is very different in Behar.

It would not be difficult to specify several points in which the rural economy of Bengal differs so much from that of Behar, as to make the Bengal Rent Bill in a great measure inapplicable to the latter province. In Behar the chain of sub-infeudation is very short. Generally speaking, the zemindar either deals directly with the ryots, or at most there is only a single ticcadar or middleman between him and them. It follows that the numerous sections of the Bill, which relate to intermediate tenures, will very seldom have to be put in force in Behar. The question of the use of land for building purposes hardly arises in Behar, where the ryot ordinarily builds his house on the portion of the village land appropriated to the purpose, and pays no ground-rent. The Commissioners may be right in holding that distraint may unobjectionably be abolished in Bengal, but in Behar it would be desirable to retain it with certain modifications. One of the most important questions in Behar relates to the commutation of bhaoli rents; but this question hardly concerns the Bengal ryot or landlord at all. It may fairly be regarded as an open question in Bengal, whether the ryot shall be allowed to contract himself out of the provisions of the Bill; but there is not room for two opinions upon the point in Behar.

But there is a wider ground of difference than any or all of these. In Bengal it may be said that the time has now come when the rent question is ripe for something like a final settlement. The experience of the last twenty years has sufficiently shown in what particulars the existing law requires to be supplemented or corrected; and it is desirable, in the interests of all classes concerned, that an attempt shall now be made to pass a measure which shall put an end to the disputes about conflicting rights, and shall secure the ryot in the enjoyment of his holding, and the zemindar in the receipt of his rent. But it cannot be said that this time has yet arrived for Behar. Rent legislation for that province must, for some years at least to come, be of a tentative and provisional character. The question of sub-letting, which presents a problem of the greatest difficulty in Bengal, has hardly yet arisen in Behar, for the simple reason that it would be impossible for any sub-ryot to make a living from the land. Exceptions no doubt occur in the case of such holdings as the guzashta tenures of Shahabad, but they are comparatively few. The Behar ryot of to-day is equally deficient in the knowledge of his rights, and in the spirit which would lead him to assert them. He is at once industrious and unthrifty; for he knows that it is his destiny to labour, and he feels that it would be useless for him to attempt to save. Accustomed to a low standard of living, he has no thought of improving his condition, because hitherto the circumstances of his lot have made permanent improvement impossible to him. His best hope has been that the zemindar and the mahajun will leave him a bare sufficiency to support life till his next harvest time comes round.

It may reasonably be hoped that better times are at hand, and some signs of improvement are already to be seen. But for the present we must legislate for the Behar ryots as for a child; we must protect him from his own acts. We must hedge him round with safeguards and securities; we must beware of sacrificing his interests to a philosophical theory of rent, or to an analysis of the exact nature of the rights conferred upon zemindars by the Permanent Settlement. We must take our stand upon the Article of the Proclamation which reserves to the Government the power to enact laws for the protection and welfare of the cultivator; and we must be prepared to carry this protection to an extent which is quite uncalled for in Bengal.

For these reasons it is submitted that it is desirable to pass a separate rent law for the province of Behar. The provisions which it should contain on the subject of the right of occupancy will be discussed in a subsequent paper. At present we are concerned with the question of enhancement: and on this point little more will be necessary than to confine the power of enhancement to landlords who hold a permanent interest, and to adopt the recommendation of the Commissioners that no enhancement shall be allowed in excess of one-fourth of the average value of the gross produce, calculated upon the price of staple crops.

11-12-80. H. J. R.

Note by Mr. Reynolds on occupancy rights in Behar.

THE right of occupancy is a right to continue to hold land so long as the rent legally demandable for it is paid.

The value of the right depends entirely on the degree of protection which it affords against enhancement. The existing law declares that the rent of an occupancy ryot may be enhanced under certain conditions, and not otherwise. As in practice it has been found almost impossible to adduce the proof necessary to satisfy those conditions, the result has been that over a great part of Bengal a right of occupancy really approximates to a right to hold at fixed rates. The right is therefore extremely valuable, and the ryot is eager to establish his claim to the enjoyment of it.

In Behar the case is very different In that province a variety of causes have combined both to restrict the establishment of the occupancy right, and to render it of little value even where it might legally be claimed. Holdings are changed at the pleasure of the zemindars, and even when they are not actually changed, it is a not uncommon practice to show them in the zemindary accounts as having been changed. In lands held under the bhaoli tenure the question of enhancement does not arise, and the acquisition of the occupancy right is a matter of indifference. Some proprietors, as the Beheea landlords, introduce into their leases a special clause providing that the right of occupancy shall not accrue. Even in the rare cases in which the ryot has cultivated the same lands for twelve continuous years, and is in a position to prove that he has done so, the landlord treats the provisions of the law with entire disregard. Instead of serving a notice of enhancement, he adopts the simpler plan of entering in his jummabundi the rent he intends to impose, and distraining the ryot's crop for the enhanced amount. The ryot may remonstrate, but he seldom resists, and still more seldom resists successfully.

The draft Bill of the Rent Commission proposed to remedy this condition of things by the enactment of the two following sections:—

(1)—That a ryot has a right of occupancy in land held for three years, if he held any land other than zeerat land in the same estate for twelve years previously.

(2)—That a ryot has a right of occupancy in land received by exchange from his landlord for land in which he had already a right of occupancy.

The officials whom I met at Bankipore were generally agreed that these provisions were insufficient to produce any substantial reform, and that the definition of zeerat land appended to the former of the two sections did not fully meet the circumstances of the case.

It does not appear that zeerat lands originally differed from the khamar or nijjote lands of Bengal; but whereas the question of khamar lands practically presents no serious difficulty, the history of zeerat lands in Behar has been such as to make the problem of dealing with them one of considerable intricacy. In Bengal khamar lands are generally cultivated by the proprietor through his own servants, or by hired labour, or they are let in bhag-jote on the metayer system, or they are (less frequently) leased from year to year at a money rental. Their area is inconsiderable, and there is seldom any dispute about the identity of the lands.

In Behar the zemindars have largely exercised the power of declaring lands to be zeerat at their own pleasure. Sometimes, when ryotti lands have been thus taken, lands which were properly zeerat have been given in exchange; but more frequently the newly taken land has been added to the existing zeerat. The area of the zeerat lands has thus been largely increased, and a great part of these lands is in the hands of indigo-planters under leases for terms of years. The definition of zeerat given in the draft Bill would, I am told, exclude something like nine-tenths of the lands now actually recognized as zeerat. The Commissioners say that they have adopted the definition recommended by the Behar Committee: but though this statement is correct with reference to the Committee's report, it will be seen by the minutes of proceedings at page 284, that an important part of the definition has been omitted in the draft Bill. The Committee proposed to define as zeerat such lands as had been cultivated for twelve years by the proprietor, or were recognized as zeerat by village custom.

In a discussion held during my visit to Bankipore, in which Messrs. Halliday, Edgar, Metcalfe, Finucane, and Gibbon took part, it was agreed that three classes of land ought to be separately recognized and provided for.

I. *Zeerat lands.*—With regard to these lands, it was held that existing facts must be accepted, and that it is now too late to institute an enquiry into the manner in which lands may have become zeerat, or to restore them to the village community on the ground of their having been improperly taken.

The only measure necessary would be to prevent the further absorption of village lands into this class; and this could be effected by having the zeerat lands now defined and measured. It was considered that there would be no serious difficulty in doing this. The lands recognized as zeerat would be—

(*a*)—Lands cultivated by the proprietor for twelve years.

(*b*)—Lands shown as zeerat in butwara papers, or other records in the Collector's office.

(*c*)—Lands recognized as zeerat by village custom, or actually occupied as zeerat at the passing of the Act.

It would be necessary to prohibit any future "exchanges" of zeerat and ryotti lands.

II. *Ryotti lands.*—These would be the ordinary arable and pasture lands of the village. All ryots holding or cultivating these lands would be presumed to possess a right of occupancy. Any further conversion of ryotti into zeerat land would be absolutely prohibited.

III. *Common lands.*—It was felt that there was a class of lands which could not properly be included under either of the above headings. These are the dearah lands, the purti or uncultivated lands, and the hills, forests, and waste not customarily recognized as included in the boundary of any village. In these lands a right of occupancy might be acquired, but would not be presumed.

The zeerat lands would be absolutely at the disposal of the zemindar, who might (subject of course to existing leases and engagements) retain them in his own hands, or let them in any manner and on any terms he pleased.

With regard to the ryotti lands, the question was raised whether the existence of the right of occupancy should be an absolute presumption, or a *primâ facie* presumption which might be rebutted by evidence showing that a ryot had not held for three years. It was considered that the presumption should be absolute and not liable to be rebutted. The zemindars generally are strongly opposed to any extension of the right of occupancy, and will do their utmost to defeat it. The Maharajah of Durbhunga told me in conversation that he was in favour of a *gradual* recognition of occupancy rights, but that the proposal to reduce the term to three years would compel him to change his system. His present plan, he said, was to give leases for ten years, and if the ryot showed himself a good tenant, to renew his lease, and allow him to acquire a right of occupancy; but that if the term were reduced to three years, he would be obliged to reject all his tenants at the end of two years, so as to bar the acquisition of the right. Mr. Mylne told me he believed that a similar practice would be very general.

It is certainly one unfortunate result of Act X of 1859 that the occupancy right has come to be looked upon as a privilege which may be acquired by the indulgence of the zemindar—a theory entirely unknown to the common law of India and to the old Regulations. Considering the great power of the zemindars in Behar, I am inclined to think that nothing short of a distinct affirmation of the principle that the right of occupancy is inherent in the position of a tenant of ryotti lands, will be sufficient to enable the Government to make the enjoyment of the occupancy right a reality. There is no doubt a certain innovation in this principle, as the right has hitherto been a personal one, annexed to the

tenant, and not to the land. But it may be questioned whether the object in view can otherwise be secured; and the principle has already been accepted in the recent letter of Government to the British Indian Association, in which it has been laid down that if a landlord purchases an occupancy holding, he must re-settle it subject to the occupancy right.

One further limitation is required by the peculiar circumstances of Behar. The indigo-planters, as a body, are in favour of making occupancy rights general and transferable, with the object of getting these holdings into their own hands, and becoming more independent of the zemindars than they are at present. Some precaution against this is absolutely necessary. However tender the authors of the Regulations may have been of the privileges of the khoodkhast ryot, they certainly did not contemplate the extension of those privileges to men whom they would have regarded as interlopers. The whole object of the scheme would be defeated if occupancy holdings were to pass in any large numbers into the hands of the planters. The exact form of the proviso would have to be carefully considered. It might not be sufficient to declare that the occupancy right can only be enjoyed by natives of India; for this might be evaded by the holdings being purchased in the names of servants of the factory. The local officers would probably be able to suggest a suitable form. It would still be open to the planters to rent the zeerat lands as hitherto; and to this there is no objection.

In lands of the third class, or common lands, a right of occupancy would be acquired by a tenancy of three years. Such lands could not be broken up for cultivation without the permission of the zemindar. If he chose to cultivate them by his own servants or by hired labour for 12 years, they would be recognized as zeerat; but if he chose to let them out to ryots, they would come under the second class as soon as a right of occupancy had been acquired in them.

I am not sufficiently acquainted with Behar to be able to offer an opinion on the practical working of the above scheme. The proposals seem to me to be fair, and the officers present at the discussion declared the plan to be workable; while Mr. Gibbon (who may be taken as a representative of both the landholding and the planting interest) expressed himself willing to accept it. It must be understood that nothing like a cadastral survey of the province would be required. It would be necessary to mark off and measure the existing zeerat lands; but it was stated that this would not involve much trouble or expense, and it was considered that there would be no disputes as to whether lands fell within the second or third of the three classes. The Collector should be vested with power to determine such disputes, if they arose, under rules to be prescribed by the Board with the sanction of Government.

In Behar, as elsewhere, the question of making occupancy holdings transferable is hotly disputed. The two extremes of the opposite views entertained on this point are represented by Baboo Hurbuns Sahai, the Secretary of the Behar Landholders' Association, and Mr. Hudson, the Secretary of the Behar Planters' Association. The Baboo was decidedly of opinion that transferability would speedily work the utter ruin of the ryot, by the land getting into the hands of planters and mahajuns. Mr. Hudson who was naturally not much impressed with the danger of the lands getting into the hands of planters, considered the mahajun to be not so much a necessary evil as a public benefactor. It is impossible, he urged, to prevent the ryot from having recourse to the mahajun, and the great thing is to make the mahajun's terms as reasonable as possible. Let the ryot therefore have the fullest power not only to sell, but to mortgage.

The picture, which is sometimes drawn, of the land getting into the grasp of a mercantile class, unconnected with agricultural pursuits, and holding the old ryots as their serfs, is, I believe, a very incorrect one. The mahajun is more often than not a well-to-do ryot, resident in the village, and engaged in agriculture on his own account. That men of this stamp should be able to increase their holdings by buying up occupancy rights is not much to be regretted. They are the most likely class to lay out capital on the land, to stock it properly, to introduce new staples and improved methods of cultivation. At the same time, though I believe that the land must eventually tend to come into the possession of persons of this kind, I think it would be a misfortune if the transfer were to be other than a very gradual one. I fully agree in the remarks of the Rent Commissioners on the impolicy of allowing occupancy holdings to be mortgaged and in the distinction which they draw between mortgages and sales. To allow a right of sale gives a tenant a feeling of proprietorship; to admit a power of mortgage is apt to be a temptation to improvidence and unthrift.

There are two points in which the peculiar circumstances of Behar must be kept in view in dealing with this question of the transfer of occupancy holdings. The *first*—the danger of these lands being largely transferred to indigo-planters—has already been noticed. The *second* arises from the general prevalence of the Mitakshara Law. If an occupancy holding is declared to be heritable (for it is doubtful whether it is heritable under the present law—*see* page 39 of the Digest), it is manifestly out of the question that it should be inherited by a joint Hindu family, or that the consent of the entire family should be necessary to its transfer. The right of transfer must be vested in the person who is registered in the landlord's serishta, and it must be provided that the landlord shall not be required to register more than one person, nor to recognize trusts. It must be left to the members of the family to settle among themselves, who shall represent them, and they must agree to be bound by his acts. This principle is daily carried out in the case of peasant proprietors in France. All the sons of a deceased proprietor inherit, but if the property is too small to admit of sub-division, the heirs settle among themselves which of them shall hold the lands.

When these two points are provided for, there seems no reason why transfer should not be freely allowed. The case of the guzashta tenures of Shahabad, which are admitted to be heritable and transferable, afford a strong practical argument in favour of extending the right of transfer to occupancy holdings in general. I made special enquiry on this point, and found good reason to believe that in the case of these tenures the right of transfer has been attended with good effects to all parties concerned. It seems reasonable, however, that if the consent of the zemindar is not to be required, he should at least have an opportunity of avoiding the necessity of admitting an unacceptable or unfriendly tenant, and it would be only fair to give him a right of pre-emption. It has also been re-

presented to me that in some places, and especially in Shahabad, there exists a powerful village combination which no purchaser, even though he were the zemindar, could successfully oppose, and that in such villages it would be desirable to give a right of pre-emption to the local ryots. I do not very clearly see how this could be done; but the point may be worth further consideration.

It does not seem necessary here to enter upon the question of sub-letting. That question does not present any special difficulties in Behar; on the contrary, the problem in that province is a much easier one than in Bengal. Sub-letting takes place where the status of the ryot is secure, and where the rental forms only a small proportion of the gross produce; but in Behar these conditions are comparatively rare.

The proposals of the present note may briefly be summed up as follows :—

1. To recognize three classes of lands—
   - (*a*)—Zeerat lands, in which no rights of occupancy can be acquired.
   - (*b*)—Ryotti lands, in which a right of occupancy shall conclusively be presumed.
   - (*c*)—Common lands, in which a right of occupancy may be acquired, but shall not be presumed.
2. To debar the acquisition of occupancy rights by planters.
3. To make occupancy holdings liable to be sold for their own arrears, but not for other decrees of the Civil Court.
4. To recognize transfer by private sale, but to prohibit mortgages.
5. To declare that the power of transfer shall rest with the registered holder, and that the landlord need not register more than one person.
6. In cases of sale, either under decree for arrears or by private contract, to allow a right of pre-emption to the zemindar or the village community.

If these principles are approved, the specific provisions of law necessary for carrying them out can be settled in communication with the local officers.

I propose to submit a further paper on the question of the commutation of rents payable in kind.

16-12-80. H. J. R.

Note by Mr. Reynolds on Commutation of Bhaoli Rents in Behar.

THE various kinds of bhaoli tenures which prevail in Behar are described at page 79 of the report of the Rent Commission, and at pages 18-19 of the memorial of the Behar Landholders' Association. In some cases the crop is actually divided: in others the value of the landlord's share is paid in money. But the principle which runs through them all is that the rent of each year depends directly upon the quantity of the gross produce. Bhaoli tenures are found in every district of Behar, but they are most common in Patna and Gya. In Northern Tirhoot and in Chumparun they differ in some important respects from the tenures in the tracts bordering on the Ganges, and in South Behar: and this difference will be more fully noticed hereafter. The danabundi system is by far the most usual: and, under this system, the landlord's share of the produce having been previously agreed upon, an estimate is made, when the crop is approaching maturity, of the actual yield of each beegah, and the value of the landlord's share is paid to him in money at the current market rate of the day. It is, I understand, a rare thing for a dispute to occur as to the rate at which the money equivalent is to be calculated: but the amount of the yield is a continual subject of dispute.

The bhaoli tenure is unequivocally condemned by the Rent Commissioners, who describe it as a metayer system with most of its worst features and few of its advantages. They remark that the Behar ryot gets nothing but the bare land: that the whole cost of production falls upon him: and that the share left to him too often amounts to less than half the crop. They suggest that it is possible that the depressed condition of the Behar ryot, and his incapacity to maintain his legal rights, may be connected with the prevalence of this system in the province. But it is noticeable that Mr. Dampier, who had (I believe) more practical acquaintance with Behar than any other member of the Commission, does not concur in these remarks.

It is perfectly true that the bhaoli system, as generally practised in Behar, has scarcely a single redeeming point. It gives rise to continual oppressions and exactions. Cases occur, as remarked by the Behar Rent Committee (page 272), in which the grain is allowed to rot on the threshing-floor or in the field, because the ryot will not agree to the zemindar's proposals for the division or valuation. The system operates as a direct discouragement of the growth of the more valuable crops: in fact, bhaoli cultivation is almost entirely confined to paddy.

Even what are claimed by the defenders of the system as its advantages, are in reality among its worst evils. It was said in 1858, and the statement has been since repeated, that the ryots, having no capital and being an improvident race, would be ruined by one or two bad seasons if they had to pay fixed money rents; whereas under the bhaoli system they can always rub on. Few things can be worse than a system which, while it supplies little stimulus to exertion, removes the penalties of improvidence, and allows the mass of the people to "rub on" in a degraded condition, from which they have neither the power nor the will to raise themselves. Nothing could be better adapted to perpetuate pauperism, and to destroy the growth of habits of foresight, economy, and independence.

At the same time it must be admitted that the strictures of the Rent Commissioners are not entirely in accordance with the facts of the case. It is not correct to say that the ryot in general gets nothing but the bare land, or that, where he does so, the share left to him is less than half the crop.

In South Behar generally, and in the portions of North Behar which border on the Ganges, the landlord constructs and maintains the reservoirs for storing water, the wells for irrigation, the village channels and embankments, and similar works, which are locally known by the name of gilandazi. His share is usually nine-sixteenths of the grain;

but the whole of the straw and chaff belongs to the ryot.

In Champarun and Northern Tirhoot the circumstances are different. The bhaoli tenure in these tracts is a kind of joom cultivation, and no part of the cost of production falls upon the landlord. The ryot takes up unoccupied land, and prepares it for rice cultivation. He pays no rent the first year, and he generally throws up the land after three years, and takes a fresh piece of ground. In the second and third years the landlord gets half the value of the grain crop, calculated on the danabundi principle.

The draft Bill of the Rent Commission proposes to declare—

Section 83—That rent payable in kind shall not exceed half the gross produce.

Section 84—That on the application of either the landlord or the tenant, the Collector shall depute a proper officer to make the division or valuation, and that the award of such officer shall be final, unless set aside in a suit in the civil court.

Section 85—That the danabundi papers shall be filed in the office of the Collector within 15 days after the appraisement.

Section 86—That either the landlord or the tenant may apply for the commutation of bhaoli rents to a money rental. Such money rent shall be fixed according to the prevailing money rent, payable by the same class of ryots for land of a similar description, and with similar advantages, in the vicinity, or, if no such prevailing rate obtains in the vicinity, then according to the average value of the landlord's share of the actual gross produce for the preceding five years, a reasonable deduction being made therefrom in consideration of the whole risk of cultivation being taken by the ryot.

The provisions of section 83 would have only a very partial application, as they would not extend to lands held on the danabundi system, in which the actual gross produce is not delivered. I found the Behar officers were generally agreed that where the zemindar maintains the works known as gilandazi, nine-sixteenths is not an exorbitant proportion for the landlord's share: and that the case is certainly not of a kind to require interference with existing contracts, or with local custom. I agree in thinking that this section should be omitted from the Bill.

On section 84 there was considerable difference of opinion. Mr. Halliday was satisfied with the section as it stands, but the majority thought that the words requiring the Collector to depute "a proper officer" would give much trouble in the working. Bhaoli lands being almost exclusively paddy, and the valuations being required to be made shortly before the ripening of the crop, applications from all parts of the district would come in about the same time. The duty could not well be entrusted to any officer of lower rank than a Sub-Deputy Collector or Canoongo, and there might be, and probably would be, a score of simultaneous applications from different quarters of the district. Mr. Edgar would not trust the Collector's officer to make any valuation or estimate. He would have the crop cut and actually divided in the officer's presence. Mr. Metcalfe thought the Collector should direct the mehetwara (a village officer) to set aside two or three fairly average cottahs of the crop, and to allow the ryot to cut and remove the rest. He believed that the duty would generally be honestly performed. Mr. Gibbon, speaking from experience, said he never had any practical difficulty. If he thought the ryot's estimate too low, his plan was to pay the ryot his valuation, and take over the crop himself. This is exactly the plan which the Collector of Customs adopts in the case of under-valuation by an importer; and it is a perfectly fair and simple arrangement But the law could hardly make it compulsory on the landlord to adopt such a practice.

It will probably be best not to fetter the Collector by any strictly defined procedure, but to say in general terms that he may give directions for the division or appraisement in accordance with such rules as the Board of Revenue may prescribe in that behalf. The clause which permits the award to be set aside by a suit in the civil court is likely to do more harm than good. It is important that disputes of this kind should be promptly and finally settled, even at the risk of their being sometimes decided wrongly. The worst that could happen would be that one party or the other might get a few maunds more or less than his proper share. The award ought to be absolutely final.

Section 85, requiring the danabundi papers to be filed in the Collectorate, was approved by all.

Section 86 gave rise to much discussion, both on the policy of encouraging commutation, and on the principles on which the commuted rent should be calculated. Mr. MacDonnell was in favour of not only encouraging commutation, but of using some pressure to forward it. Mr. Mylne told me that in Shahabad he had commuted bhaoli tenures for money rents to a considerable extent, and that though the ryots were at the time strongly opposed to the change, they were now not only reconciled to it, but would not return to the old system on any account. It appeared, however, that these were lands which came under the influence of the canal works, and that the continuance of gilandazi was not necessary on them. Baboo Bhoop Sen Singh, the Government Pleader of Gya, thought commutation would be very injurious to the ryot, and Baboo Hurbans Sahai of Arrah was of the same opinion.

It was generally agreed that where gilandazi was necessary, the commutation of bhaoli rents was neither practicable nor desirable, because the ryots could not construct or maintain the works, and the landlord could not be expected to do so after the rents had been commuted. Mr. Finucane said that in the Tikari escheated estates in Gya money rents had been introduced rather against the wish of the ryots. The rents were equal to about five-sixteenths of the average gross produce; but it was understood that Government would maintain the gilandazi as heretofore. The scheme had not yet been tested by experience, and he felt rather doubtful how it would work.

There was a decided preponderance of opinion that the option of commuting ought to be confined to the ryot, and not extended to the landlord also. This was the view taken by Mr. Dampier (see page 79 of the report), and I would strongly recommend its acceptance. I do not suppose that the landlords would very generally desire to commute, but to force commutation on the ryots might have very disastrous results. The ryot may be allowed to apply for commutation if he pleases, but it was generally thought that such applications would be rare

As to the terms of commutation, the proposal of the draft Bill appear fair enough: but it is better that the "reasonable deduction" should be specified at least within certain limits in the Bill rather than that it should be left to the discretion of the courts. I would suggest that it should ordinarily be fixed at 33 per cent., and that it should not be more than 50 or less than 25 per cent. Mr. Mylne gave me a paper showing the outlay and the return on various kinds of cultivation: and in this he entered the produce of paddy lands at 20 maunds the beegah,* the selling price being taken as Re. 1 per maund. He allowed 10 per cent. for risks of cultivation. At this rate, assuming the landlord's share to be only one-half (and it is more often nine-sixteenths), he would get a money rent of Rs. 9 per beegah, which is something like three times the proper rent. I do not accept these figures as accurate, for I have no doubt that 20 maunds is much in excess of the average produce; but the calculation shows that, on figures furnished by a zemindar himself, a deduction of even 50 per cent. would not be unreasonable.

* It will be understood that the local beegah is referred to, equal to ⅗ths of an English acre.

If the ryot elects to commute, he should be required to commute the whole of his holding. It would not be fair to the zemindar to allow the ryot to pick out the best fields for a money rental, and to leave the inferior lands under the bhaoli system.

It has been strongly urged upon me that the law ought distinctly to declare that the zemindar is not a co-parcener in the crops grown upon lands held on bhaoli tenure. I understand that at present it is held by the courts, that the zemindar cannot commit trespass in respect of such lands. He may send his men to take possession of the crop; he may prevent its being cut or removed without his permission; and in all this he is considered to be within his right, for the crop belongs to him as much as to the ryot. It is needless to say that this nominal equality of the two parties really works the greatest injustice. It makes the zemindar master of the situation, for he can afford to wait till the ryot gives in. I entirely agree in thinking that it should be specifically declared that the zemindar is not a co-parcener, that the ryot is the party in possession, and that the zemindar is not entitled to interfere with the cutting or removal of the crop. But I would not extend this principle to zeerat lands held on bhaoli rents, for in such lands I think it may fairly be argued that the zemindar is a co-parcener.

A further question was raised, whether the zemindar should not be required to pay his share of the water rate on bhaoli lands. At present it was said, a share is levied from the landlord under a departmental order, but it may be doubted whether the courts would recognize this as strictly legal. It seems to me that it would be better to leave this point alone. If the landlord is declared liable to pay a share of the water-rate, this might be twisted into an admission that he is a co-parcener. It is true that a distinction might be made between partnership in the land and partnership in the crop; but I should prefer to leave the matter as it is: and the question, after all, is one which concerns the Irrigation Act rather than the Rent Bill.

The proposals which I have to submit in connection with the question of bhaoli lands, are the following:—

1. That the landlord's share of the produce should be left to be adjusted, as at present, by contract or by local custom.

2. That in case of dispute as to the respective shares of the two parties, the Collector shall be authorized, on application made to him, to make an award in accordance with such rules as may be laid down by the Board.

3. That such award by the Collector, or by an officer deputed by him under such rules, shall be final, and not open to revision by the civil court.

4. That the danabundi papers shall be filed in the Collectorate or sub-divisional office within fifteen days after the valuation.

5. That the zemindar shall not be allowed to apply for the commutation of bhaoli tenures to a money rental.

6. That the ryot may apply for such commutation, but his application must include all the bhaoli lands of his holding.

7. That such money rental shall be fixed, if possible, in accordance with the usual money rental of similar arable lands in the neighbourhood.

8. That where this cannot be done, the rental shall be fixed in accordance with the average amount of the landlord's share during the preceding five years.

9. That in this last case, a deduction shall be made on account of the risk of cultivation being undertaken by the ryot.

10. That such deduction shall not be less than 25 or more than 50 per cent., and shall ordinarily be 33 per cent.

11. That the law shall declare that the landlord is not a co-parcener with the ryot in crops grown on bhaoli lands.

12. That this rule shall not extend to zeerat lands, nor shall the ryot be entitled to apply for commutation in respect of such lands.

With the opinion I hold about bhaoli tenures, I should of course have been glad to be able to see my way to recommending more active measures for their commutation. But great mischief might be done if the commutation were hastily or rashly carried out, and if the gilandazi works were suffered to fall into decay. Let it be remembered that if progress is not very rapid, it may be expected to be steady, and that lands on which a money rent has once been introduced are not likely to be ever held in bhaoli again.

19-12-80. H. J. R.

Note on the right of occupancy.

What may be termed the historical aspect of this question has been discussed with much learning and ability in the papers appended to the report of the Rent Commission; and the criticisms which that report has elicited may fairly be taken to show that the subject is one upon which acute and impartial investigators may honestly arrive at very different conclusions. If it was really the intention of the legislators of 1793 to establish fixed rates of rent in precisely the same manner as they established fixed amounts of revenue, it would not have been difficult for them to express their intention in much plainer words than any which they selected for the purpose. If, on the other hand, as an eminent judicial authority is reported to have held, the effect of the Permanent Settlement was to reduce the ryots generally to the position of tenants-at-will, the Regulations of 1793 must

be read in as non-natural a sense as the most High-Church clergyman ever affixed to the 39 Articles.

In the present paper it is intended to deal only with the practical view of the question. Accepting the principle which has been recognized by the Government of Bengal, that the occupancy tenure should be made the rule and not the exception, and that protection against arbitrary eviction should be given to every settled cultivator who pays the established rent, it is to be considered by what legislative formula this principle can most effectually be carried out.

Act X of 1859 declares that every ryot, who shall have cultivated or held land as a tenant for a period of twelve years, shall have a right of occupancy in the land so cultivated or held by him; but that this shall not affect the terms of any written contract. It would be foreign to my purpose to consider whether the framers of the Act intended by this section to create a new right, or to limit existing rights, or simply to declare and define the law as they conceived it to stand. The definition given in the section has been accepted by the courts as exhaustive, and in this way it has operated both to create a new right, and to limit a right which was previously claimable. The new right consisted in the extension of the occupancy tenure to non-resident cultivators. The limitation of the old right was two-fold: first, by the exclusion of the resident cultivator who had not held for twelve years; and secondly, by the provision which required the same land to have been held throughout the statutory term.

The recommendations of the Rent Commissioners on this question were the result of a compromise. They proposed to retain the substance of the present law, but to extend it by giving a *quasi-occupancy* right to ryots who had held for three years and upwards, but for less than twelve years. This chapter of the draft Bill has been violently attacked, and has not been very warmly defended. This, indeed, is not to be wondered at; for the principle which underlies the chapter is equally opposed to the views of those who hold that the ryot possesses a right anterior to, and independent of, that of the zemindar; and of those who regard the zemindar as an absolute proprietor, entitled to deal with his land exactly as he pleases. The draft chapter permits the zemindar to enhance at his discretion, and to employ enhancement as a means of eviction; but it limits the practical exercise of this power by declaring the evicted ryot entitled to compensation. The scheme may possibly be defended on the ground that it would work what is called "substantial justice;" but it is difficult to reconcile it with any theory of the rights of either of the parties concerned.

In order to carry into effect the principles which have been indicated above as the accepted policy of Government, it would seem that answers are required to the three following questions:—

1.—How is protection to be given against arbitrary eviction?

2.—Who is to be considered a "settled cultivator?"

3.—How is the "established rent" to be determined?

I. Efficient protection against arbitrary eviction cannot be given by simply depriving the landlord of the power to evict; for it is clear that, if the rent may be summarily raised, the right to continue in occupation of the land becomes practically worthless. A study of the regulations has led some authorities to the conclusion that the legislation of 1793 left the zemindar no power whatever to enhance the rents of the ryots beyond the pergunnah rate, and that the pergunnah rate was itself unalterable. It is not proposed to discuss this question here; for legislation and prescription have now fully established the right of the zemindar to a reasonable enhancement of rent. This power of enhancement, however, must be limited by certain restrictions; and the custom of the last twenty years has recognized the operation of these restrictions in the case of all ryots possessing a right of occupancy. The best protection, therefore, against arbitrary eviction will be given by extending the right of occupancy to all settled ryots. The following section is accordingly proposed for consideration:—

"Every settled ryot has a right of occupancy in the land which he cultivates or holds as a tenant; but this rule does not apply to khamar, neej-jote, or seer land belonging to the proprietor of the estate or tenure."

II. By the present law, a ryot who has held for twelve years acquires a right of occupancy in the particular fields which he has held for that period. Some leading members of the landlords' party have expressed their willingness to have the term reduced from twelve years to ten years; but they are strongly opposed to any further concession. I desire to represent not only that this concession would be utterly worthless, but that no satisfactory definition can be framed so long as the principle is accepted of connecting the acquisition of the right either with *any* previous period of tenancy or with the cultivation of particular lands. The reduction of the term of twelve years to five or three years would simply be the signal for the institution of a vast number of ejectment cases, and for the insertion in all future leases of a stipulation that the land shall be surrendered at the end of four or two years, as the case might be. More than one landlord has told me plainly that this would be his policy. It is necessary to get rid of the erroneous notion that the right of occupancy is a privilege which may be acquired by the indulgence of the zemindar, instead of being (as it properly is) inherent in the status of a settled cultivator. All that the zemindar can reasonably demand is that the right shall not be acquired by any vagrant squatter who may take up land for a single harvest with no intention of becoming a permanent tenant. The definition should be wide enough to include any ryot who is *bonâ fide* domiciled in the village, and it should extend to all lands which such a ryot may cultivate as a tenant. The section of the law might be worded as follows, the explanation appended being necessary to prevent disputes as to the meaning of the word "village:"

"A settled ryot is a ryot who has his permanent residence in the village or estate in which he holds or cultivates land as a tenant."

Explanation.—"Any number of villages which are included in the village maps of the Revenue Survey within one exterior boundary shall be deemed to be one village for the purposes of this section."

III. The principle upon which the established rent is to be determined has already been explained in the 5th paragraph of the Government letter of the 10th December to the British Indian Association. There will be no violent disturbance of existing rents; but enhancement will be permitted only in accordance with the table of rates which

may be drawn up for each district or other local area. The maximum limit of enhancement will be one-fourth of the gross produce of the staple crop.

Maharajah Jotendromohun Tagore told me that he would not object to these provisions if the maximum limit were fixed at six annas (⅜) instead of at one-fourth. Baboo Joykissen Mookerjee objected to any limitation, and desired that Government should ascertain what proportion the existing rent bears in different localities to the gross produce, and should allow future enhancement in the the same proportion. It was not difficult to see that each of these gentlemen looked at the question simply as it affected himself personally. But it was something to find that neither of them objected to the principle of having a table of rates prescribed by Government.

The rule which would limit enhancement to one-fourth of the gross produce of the staple crop seems to me a very fair one, and I would strongly recommend that it should be adhered to. It is true that in some localities it will have the effect of arresting enhancement altogether, at all events for some time to come; but if we accept the principle that the ryot is to be allowed not a bare maintenance, but a reasonable profit, it must be admitted that in such localities enhancement has already reached its proper limit.

The rule could not be put into any brief form of words, as it would be necessary to make detailed provisions for allowing all parties concerned to bring forward objections; but the substance of the enactment would be as follows:

"It shall be lawful for the Lieutenant-Governor to direct that for any district or portion of a district a table of rates shall be drawn up, showing the equitable rates payable for each class of land by ryots having a right of occupancy. Such rates shall in no case exceed the value of one-fourth of the gross produce of the land, calculated upon the average price of staple crops."

I proceed to offer a few remarks on some other questions connected with the occupancy right.

By the draft Bill (section 19, explanation 4*h*) the acquisition of a right of occupancy may be barred by a written registered contract providing that the right shall not be acquired. I am very strongly of opinion that this should not be allowed. Whether existing contracts should be touched is a different question, and, on the whole, I should be inclined to let them stand; but I would certainly enact that no contract entered into after the passing of the Act shall have the effect of preventing the acquisition of the right. The principle of making the occupancy right a matter of bargain or contract between landlord and tenant is radically a vicious one.

Some remarks appear to be called for upon Chapter VI of the draft Bill, which deals with the question of the use of land for building purposes The chapter has given very great offence, and I venture to think that there would be no harm in omitting the greater part of it. Section 36 declares that a ryot may not use land for building or other purposes inconsistent with the use for which it was let, but that this rule does not extend to the erection of a brick-built or other dwelling-house for himself and his family. In this section the words "brick-built or other," which have been much objected to, might very well be omitted. They are really surplusage, for no ryot would dream of building a pucka house except on lands of which he held a perpetual lease. The succeeding sections 37 to 40 might be omitted altogether. Sections 41 and 42 might be retained, with the exception of the last clause of section 42. As the right of occupancy, in this exceptional case, is really the creation of the statute, I should not object to allow it to be barred by contract. As to the last clause of section 42, there is nothing really unfair in it, for land let for building will always fetch twenty years' purchase of the rental, and it is therefore perfectly equitable to say that the rent may be enhanced to 5 per cent. of the market value; but there has been such an outcry raised against the clause that I should not object to its being abandoned.

On the question of transferability, I understand that the Government adheres generally to the proposals of the Rent Commission. To these I have no objection to offer; but I do not think it necessary to import the putnee sale law into the Bill, and I should be inclined to enact that all tenures and under-tenures (but not occupancy holdings) shall be saleable under the putnee regulation without decree. Mr. Maclean, of the High Court, has urged upon me that this principle should be extended to occupancy holdings also; but I think there are great objections to this.

On the difficult question of sub-letting, I can only say that, after the best consideration I have been able to give to the subject, I am compelled to come to the conclusion arrived at by Mr. Dampier (see page 493 of the report) that any attempt to restrict sub-letting will be futile. I think it equally useless to prohibit sub-letting, or to limit the rent at which the ryot may sub-let. There are some things which legislation is powerless to effect: and it is idle to pass a law which is certain to be either broken or evaded. There also appears to me to be much force in what Mr. Dampier goes on to say regarding the policy of the prohibition. We cannot stamp out this class of men, and what have we better to offer them than this position of sub-lessees?

It may possibly be open to doubt whether there is any serious evil which requires to be met. At all events, we have the positive testimony of Mr. Taylor that in Khoordah, where unrestricted sub-letting has been permitted, it has not had the effect of diminishing the average size of holdings, the process of amalgamation having gone on *pari passu* with that of sub-division. In my own experience, the only instance which has come to my notice in which sub-letting has pauperized a large class of the tenantry, has been in the Chanchal estate in Maldah

The British Indian Association have been invited to express their views on this question, and it remains to be seen whether they will be able to suggest any satisfactory solution of the problem. But, as far as I can see at present, I should be disposed to think it sufficient to declare that an occupancy ryot may not sub-let without the written and registered permission of his superior landlord. This would act as a very substantial check, and would not be evaded. We propose to make the distraint law the normal method of recovering current rents. The superior landlord will be chary of giving permission to sub-let, for, if he gives the permission, he will lose his power of distraint. The sub-tenant, again, will be cautious in taking the land unless permission has been given; for, though he may have paid his own rent, his crops will be liable to be distrained for rent due by his lessor.

29-12-80. H. J. R.

APPENDIX V.

Correspondence with the High Court regarding the establishment of Special Rent Courts.

No. 582J, dated Calcutta, the 7th February 1881.

From—Horace A. Cockerell, Esq., Secretary to the Government of Bengal, Judicial, Political, and Appointment Departments.

To—The Registrar of the High Court.

The Lieutenant-Governor has recently had under consideration the question of expediting the disposal of rent-suits so as to avoid the delays now frequently complained of owing to the suits being tried by the same courts that have to deal with more complicated cases. In considering this subject, the Lieutenant-Governor has had before him the Minute recorded by Mr. Justice Jackson on the 26th April 1877, and much benefit would, in Sir Ashley Eden's opinion, result from a distribution of the different classes of litigation among the different moonsifs in the manner suggested in Sir Louis Jackson's first proposal as stated on page 5 of his Minute. As pointed out by Sir Louis Jackson, it is the co-existence of complicated cases in a court which has the disposal of claims for rent, and suits of the Small Cause Court class, which obstruct the progress of the more simple cases, and the obstruction would be prevented by allotment of rent-suits, or, at all events, certain classes of rent-suits and Small Cause Court cases, to moonsifs who have no heavier or more intricate work to perform.

2. The Lieutenant-Governor is not in favour of Sir Louis Jackson's proposal that moonsifs should go from thana to thana in order to try rent-suits and suits of the Small Cause Court class. Indeed, Sir Ashley Eden would like the courts to be as little peripatetic as possible, so as to avoid expense and waste of time and facilitate the formation of a bar for each court. Each moonsif appointed to try rent-suits and Small Cause Court cases might, perhaps, have two courts conveniently situated within his jurisdiction, and he might go on circuit from one to the other as the present Small Cause Court Judges do; while all cases requiring any great amount of argument or record would be heard at the sudder or sub-divisional head-quarters. At present in many districts—such as Backergunge, Dacca, Hooghly, Rungpore, and the 24-Pergunnahs—there are two or more moonsifs at almost each moonsifee, and a knowledge of number of suits of each class, and the nature of the suits, appears to be all that is required in order at once to distribute the work and give effect to the Lieutenant-Governor's proposal. The increase in the number of original suits of every class instituted in the civil courts of the province is, as pointed out by the Hon'ble Judges in their report on the administration of civil justice for 1879, not only a justification of the increased establishment of moonsifs sanctioned in 1878, but an indication that a further increase will soon be needed. The increased staff which the progress of litigation thus renders necessary will enable Government to bring justice nearer to the homes of the people, and at the same time to carry out the scheme for the separation of the different classes of suits without, on these accounts, incurring any heavy additional expenditure.

3. The Lieutenant-Governor has not before him sufficient information regarding the number and character of the suits of each class instituted before the different moonsifs in the province to enable him to say how the work may be best distributed among the several moonsifs in any district, and in any case the Lieutenant-Governor would desire first to consult the Hon'ble Judges of the High Court on the subject, and obtain their concurrence and co-operation. I am directed therefore to bring the subject to the notice of the Hon'ble Judges, and to ask their aid in giving effect to the Lieutenant-Governor's wishes. The Lieutenant-Governor will be much obliged if the Hon'ble Judges will select the districts in which the proposed measure may at once be carried out, and if they will favour him with their recommendations as to the arrangements and distribution of work which will best secure the objects of the scheme. The matter has already been brought unofficially to the notice of the Hon'ble Judges, and the Lieutenant-Governor understands that no legal difficulty is likely to be experienced in giving effect to the scheme.

No. 1135, dated Calcutta, the 28th May 1881.

From—C. A. WILKINS, Esq., Offg. Registrar of the High Court of Judicature at Fort William in Bengal,

To—The Secretary to the Government of Bengal, Judicial Department.

I AM directed to acknowledge the receipt of your letter No. 582J, dated 7th February last, and subsequent reminders, on the subj ct of the proposal to employ selected Moonsifs solely for the trial of rent suits and Small Cause Court cases, and to say that, having taken the opinion of the several District Judges of the Bengal Presidency, the Court are now in a position to make the following recommendations and suggestions.

2. In order to enable the Court to introduce the scheme into the districts named in the margin, the Judges recommend that the Moonsifs, whose names are given in the accompanying list, be vested with the powers of Small Cause Court Judges up to a limit of Rs. 50. These Moonsifs have been selected by the District Judges, and the selections approved by the Court.

Dacca.	Mymensing.
Jessore.	Furreedpore.
Rungpore.	Chittagong.
Shahabad.	Tirhoot.
Tipperah.	

3. With reference to the district of Dacca, the Court would recommend that the Moonsif at the Sudder Moonsifee be vested with such powers to be exercised for the present only without the jurisdiction of Small Cause Court Judge of that station.

4. In the district of Midnapore, Nuddea, 24-Pergunnahs, Sarun, and Noakholly, the Moonsif to whom it is proposed to make over the trial of rent-suits and Small Cause Court cases already hold the necessary powers.

5. With regard to the districts of Hooghly, Purneah and Backergunge, the Court desire to withhold their proposals until certain transfers in view have been effected.

6. In the remaining districts of Bengal, either from the fact that there are not two Moonsifs at the same station, or, for other sufficient reason, the District Judges are of opinion that the proposed scheme would not answer. In such districts, therefore, the Court do not at present propose to alter the existing arrangements.

District.	Moonsifee.	Number of Moonsifs at Moonsifee	Name of Moonsif recommended	Number in grade.	Remarks.
Dacca	Dacca, Sudder * ...	2	Baboo Jadunath Ghose ...	54 of III.	* But only without the jurisdictions of the Small Cause Court at Dacca.
	Kallygunge	2	,, Grish Chunder Roy ...	18 of I.	
	Manickgunge ..	3	,, Nilmadhub Roy ...	50 of II.	
Jessore	Bagirhat	2	,, Manmatha N. Chatterjee	37 of III.	
Rungpore ...	Gaibanda	2	,, Gopee Mohun Mookerjee, B L.	17 of III.	
Shahabad ...	Arrah	2	,, Lall Gopal Sen, B.L. ...	50 of III	
Mymensing ...	Attiah	2	,, Nilmony Nag, B.L. ...	41 of III.	
	Netrokona	2	,, Gobind Chunder Bose ..	23 of III.	
Furreedpore ...	Goalundo	2	,, Surath Kumar Ghosal, M A and B L. ...	6 of IV.	
	Mulfatgunge ..	2	,, Russick Chunder Roy ...	15 of IV.	
Chittagong ...	Pattiah	2	,, Purna Chunder Roy ...	71 of III.	
Tirhoot ..	Mozufferpore ...	2	,, Bhagabutty C. Mitter ..	46 of III.	
Tipperah ...	Comillah	3	,, Jadooputti Banerjee ...	48 of III	
	Muradnugger ...	4	,, Rash Behary Bose ...	29 of IV.	
	Brahmunbariah ...	3	,, Ram Chunder Dhur ...	5 of I.	

No. 2499J, dated Calcutta, the 15th June 1881.

From—H. M. KISCH, Esq., Under-Secretary to the Govt. of Bengal, Judicial, Political, and Appointment Departments,

To—The Registrar of the High Court.

I AM directed to acknowledge the receipt of your letter No. 1135, dated the 28th ultimo, and in reply to say that the Lieutenant-Governor accepts the recommendations made by the Hon'ble Judges for the introduction, into the districts marginally noted, of the proposed scheme for the employment of selected Moonsifs solely for the trial of rent-suits and Small Cause Court cases. The necessary notifications, copies of which are enclosed, vesting the Moonsifs named in the list forwarded with your letter with the powers of a Small Cause Court Judge for the trial of suits up to a limit of Rs. 50 in value will be published in the *Calcutta Gazette*.

Dacca.	Tirhoot.
Jessore.	Tipperah.
Rungpore.	Midnapore.
Shahabad.	Nuddea.
Mymensingh.	24-Pergunnahs.
Furreedpore.	Sarun.
Chittagong.	Noakholly.

2. I am to request that, under the orders of the Hon'ble Judges of the High Court, the requisite instructions may be issued to District Judges in view to the scheme being carried into effect, and that the Lieutenant-Governor may be favoured with a copy of any instructions that may be issued, as Sir Ashley Eden is much interested in the matter. I am also to request that, with the permission of the Hon'ble Judges, a special report may be furnished on the working of the scheme after it has been in operation for a year

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No. 1465, dated Calcutta, the 6th July 1881.

From—C. A. WILKINS, ESQ., Offg. Registrar of the High Court of Judicature at Fort William in Bengal,

To—The Secretary to the Government of Bengal, Judicial Department.

As requested in paragraph 2 of Mr. Kisch's letter No. 2499J, dated 15th ultimo, on the subject of the proposed scheme for the employment of selected munsifs solely for the trial of rent-suits and Small Cause Court cases, I am directed to forward, for the information of the Lieutenant-Governor, the accompanying copy of the instructions issued by the Court to the several District Judges in whose jurisdictions the scheme will be at once taken in hand.

No. 1429, dated Calcutta, the 1st July 1881.

From—C. A. WILKINS, ESQ., Offg. Registrar of the High Court of Judicature at Fort William in Bengal,

To—The District Judge of

THE recommendations of the Court regarding the introduction into certain districts of Bengal of the proposed scheme for the employment of selected munsifs solely for the trial of Small Cause Court cases under Rs. 50 in value and of rent-suits, having been accepted by the Lieutenant-Governor of Bengal, I am now directed to convey to you, in continuation of the Court's general letter No. 4 of the 10th March last, the following instructions for your early and careful observance.

2 I am to forward with this letter copies of a list showing to what districts, and to what munsifs in each district, the new arrangement should be made to apply; and I am to request that you will send each of the officers affected thereby a copy of this letter, as well as a copy of the list in question, together with any special instructions on the subject which the circumstances of your district may seem to call for.

3. I am to request that, as soon as possible after you receive this letter, you will, so far as concerns the munsifs in your district, arrange that all suits of the Small Cause Court class not exceeding Rs. 50 in value, and all rent suits, be in future instituted and tried in the Court of the munsif named in the list sent herewith, and that such munsif transfer to his fellow-munsifs, at the same chowkey, all other suits which may be pending in his court, the only exception being that of part-heard suits, especially those in which the evidence of witnesses has been recorded. Similarly, all munsifs in a chowkey other than the selected munsif mentioned in the list should transfer to the latter any suits of the Small Cause Court class under Rs. 50 in value, and rent-suits which are on their file, and which have not been partly heard.

4. In making these transfers, the several munsifs should be careful to retain on their files a sufficient number of cases to occupy their time for the present, and until the new arrangement has been brought into full working order. On the other hand, you are requested, on your part, to carefully watch the progress of the work in each Munsif's Court and to scrutinize the state of his files from time to time. It is at this season of the year that the greater proportion of rent-suits are instituted; and if you perceive at any time that the file of any individual munsif shows a number of institutions greater than he can cope with, you should at once report to the High Court, in order that arrangements may be made.

5. Similarly, if at any munsifee the rent and Small Cause Court suits are not sufficient to fully occupy the whole time of the selected munsif, you should arrange that a certain number of title suits be made over to him for disposal, but not in such number as to interfere with the speedy disposal of the suits for the trial of which he was specially appointed.

6. I am directed to forward, in addition to the enclosures above specified, one copy of a letter No. 2499J, dated 15th ultimo, from the Under-Secretary to the Government of Bengal, and to request that the special report alluded to in the closing words of paragraph 2 thereof may be submitted to the Court after the scheme has been in operation in your district for one year. I am to add that, until the submission of such report, you are requested to submit to the High Court a quarterly report on the working of the scheme.

7 It will, of course, be understood that no instructions contained in this letter can interfere in any way with the execution of decrees, or other matters which by law must be dealt with by any particular munsif.

LIST.

Name of Munsif.	Munsifee.	District.
Baboo Grish Chunder Roy	Kalligunge	Dacca.
„ Nilmadhub Roy	Manickgunge	Do.
„ Monmotho Nath Chatterjee	Bagirhat	Jessore.
„ Gopee Mohun Mookerjee	Gyebandah	Rungpore.
„ Nilmony Nag	Atteah	Mymensingh.
„ Kanti Chunder Bahadooree	Netrokona	Ditto.
„ Surut Koomar Ghosal	Goalundo	Furreedpore.
„ Rusik Chunder Roy	Moolfutgunge	Ditto.
„ Poorno Chunder Roy	North Putteah	Chittagong.
„ Bhuggabutty Churn Mitter	Mozufferpore	Tirhoot.
„ Judooputti Banerjee	Commilla	Tipperah.
„ Rash Behary Bose	Moradnuggur	Ditto.
„ Ram Chunder Dhur	Brahmunbariah	Ditto.
„ Kader Nath Chatterjee	Midnapore	Midnapore.
„ Joy Gopal Sinha	Tumlook	Ditto.
„ Sreenath Pal	Bongong	Nuddea.
„ Mohendro Nath Roy	Alipore	24-Pergunnahs.
„ Gopal Chunder Banerjee	Diamond Harbour	Ditto.
„ Uma Churn Dutt	Baraset	Ditto.
„ Poorno Chunder Roy Chowdhry.	Busseerhat	Ditto.
„ Girish Chunder Chatterjee	Satkhira	Ditto.
„ Danesh Chunder Roy	Chuprah	Sarun.
„ Koronamoy Banerjee	Soodharam	Noakholly.

SCHEDULE I.

Reports and Memorials received on the Report and Draft Bill of the Rent Commission.

A.

Memorials, Reports, and Remarks by Associations, Landholders, Pleaders, and other non-officials.

1. Memorial by the Behar Landholders' Association, with notes on the proposed Rent Law.

2. Remarks by Baboo Lallchand Chowdhry and others, Zemindars of Chittagong, appended to letter No. 57, dated the 11th December 1880, from the Commissioner of Chittagong.

3. Letter from Baboo Kishorilall Sircar, Pleader of the High Court, dated the 21st January 1881.

4. Note on the Report and Draft Bill of the Rent Commission, by Rajah Promothonath Roy of Dighaputtia.

5. Memorial by landholders of the district of Monghyr, dated the 25th December 1880.

6. Note on the Draft Rent Bill by Baboo Joykissen Mookerjea of Utterpara, dated the 4th October 1880 (appended to letter No. 1381, dated the 5th October 1880, from Collector of Hooghly).

7. Letter from Baboo Surjinarain Singh, Pleader, Bhagulpore, dated the 9th September 1880 (appended to letter No. 3570, dated the 27th November 1880, from Commissioner of Bhagulpore).

8. Memorial by the landholders of Backergunge (without date) received on the 1st February 1881.

9. Letter from the Secretary to the Behar Indigo Planters' Association, dated the 21st November 1880.

10. Proposals for the amendment of Regulation VIII of 1819, by His Highness the Maharajah of Burdwan, dated the 9th May 1881.

11. Memorial by the landholders of Chittagong, dated the 20th November 1880.

12. Memorandum on the Bengal and Central Provinces Rent Bill, dated Lucknow, the 28th February 1881, by Luchmee Narain Pundit, Pleader of the High Court.

13. Memorandum on a Table of Rates, and the Procedure for Enhancement, by Baboo Joykissen Mookerjea (without date).

14. Petition from Hakimullah and others, Ryots of the Attia (Tangail) sub-division of district Mymensingh, in favour of the Rent Bill.

15. Petition from Khudiram Mundul and others, Ryots of district Nuddea, in favour of the Rent Bill, dated the 28th February 1881.

16. Note by the Eastern Bengal Landholders' Association on the Draft Rent Bill (received 9th March 1881).

B.

Reports by Judicial and Executive Officers of Government.

17. Report by the Commissioner of Bhagulpore (Mr. Barlow), dated the 27th November 1880.

18. Report by the Collector of Monghyr (Mr. D'Oyly), dated the 27th September 1880

19. Report by the Collector of Purneah (Mr. Pratt), dated the 24th September 1880, with some additional notes by Mr. J. A. Hopkins.

20. Report by the Collector of Maldah (Mr. Porch), dated the 23rd September 1880.

21. Report by the Deputy Commissioner of the Sonthal Pergunnahs (Mr. Oldham), dated the 17th September 1880.

22. Report by the Collector of Bhagulpore (Mr. Newbery), dated the 10th September 1880.

23. Report by the Commissioner of Dacca (Mr. Pellew), dated the 27th December 1880, giving abstracts of the reports by the Collector of Dacca (Mr. Coxhead), the Collector of Furreedpore (Mr. Weekes), the Collector of Backergunge (Mr. Veasey), and the Collector of Mymensingh (Mr. Alexander).

24. Note by Baboo Parbutticharn Roy, Deputy Collector of Dearah Surveys (appended to the above).

25. Letter from the Officiating Commissioner of Burdwan, dated the 22nd December 1880, forwarding the remarks recorded on the Rent Bill by the Commissioner (Mr. Ravenshaw).

26. Report by the Collector of Beerbhoom (Mr. Wace), dated the 6th October 1880.

27. Ditto ditto of Burdwan (Mr. Stevens), dated the 5th October 1880.

28. Ditto ditto of Bankoora (Mr. Anderson), dated the 10th October 1880.

29. Ditto ditto of Midnapore (Mr. Price), dated the 30th October 1880.

30. Ditto ditto of Hooghly (Mr. Cornish), dated the 5th October 1880

31. Report by the Commissioner of Orissa (Mr. Smith), dated the 28th December 1880.

32. Ditto ditto of Chota Nagpore (Mr. Hewitt), dated the 9th November 1880.

33. Report by the Commissioner of the Presidency Division (Mr. Monro), dated the 31st December 1880.

34. Report by the Commissioner of Chittagong (Mr. Lowis), dated the 11th December 1880.

35. Ditto ditto of Rajshahye (Lord Ulick Browne), dated the 1st February 1881, with abstracts of the reports by the Collectors of Dinagepore (Mr. Glazier), Rungpore (Mr. Gun), Pubna (Mr. Posford), and Rajshahye (Mr. Samuells).

36. Letter from the Commissioner, Patna Division, dated the 10th March 1881, forwarding reports on the Rent Bill by the Collector of Patna (Mr. Metcalfe), the Collector of Gya (Mr. Kemble), the Collector of Shahabad (Mr. Nolan), the Collector of Mozufferpore (Mr. Worsley), the Collector of Durbhunga (Mr. Barrow), and the Collector of Sarun (Mr. MacDonnell).

37. Note by Mr. Edgar on some rent questions in Behar, dated the 18th January 1881.

38. Abstract of the reports on the Rent Bill by District Judges, Subordinate Judges, and Moonsifs, forwarded by the Registrar of the High Court.

39. Letter in continuation, dated the 3rd March 1881, forwarding a report by the District Judge of Cuttack (Mr. Cochran.)

It is to be observed that several of the official reports embody the views of local committees, pleaders, landholders and other non-officials consulted by the reporting officers.

SCHEDULE II.

Reports and Memorials received on the Revised Draft Bill prepared by Mr. H. J. Reynolds on Special Duty.

A.

By Selected Officers consulted.

1. From the Commissioner of Bhagulpore, No. 5459, dated 30th March 1881.
2. „ „ Collector of Mozufferpore, No. 45, dated 8th April.
3. „ „ „ of Shahabad, No 172, dated 25th April.
4. „ „ „ of Dacca, No. 125, dated 19th April.
5. „ „ „ of Sarun, No. 100, dated 21st April.
6. „ „ „ of Backergunge, No. 142, dated 25th April.
7. „ „ „ of Durbhunga, dated 15th April.
8. „ „ Commissioner of Burdwan, No. 6, dated 26th April.
9. „ „ „ of Patna, No. 9, dated 20th April.
10. „ „ Collector of Noakholly, No. 127, dated 30th April.
11. „ „ „ of Bankoora, No. 155, dated 3rd May.
12. „ „ Commissioner of Dacca, No. 62, dated 4th May.
13. „ Mr. Finucane, C.S., dated 9th May.
14. „ the Collector of Burdwan, dated 13th May.
15. „ Mr. H. L. Dampier, dated 19th May.

B.

By Non-official bodies.

16. From the British Indian Association, dated 18th April, with note on the same by Mr. Reynolds.
17. From the 'Ryots and subjects' (of Howrah) in favour of the Ancient Settlement of Land Laws.
18. From the Ryots of Burdwan, Beerbhoom, Hooghly, and the 24-Pergunnahs.
19. From the Indian Association, dated 27th June.